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The Legitimation Strategies of NGOs

A critical study of the EU Conflict Minerals Regulation in the eastern DRC and beyond

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The Legitimation Strategies of NGOs : A critical study of the EU Conflict Minerals Regulation in the eastern DRC and beyond

Giacomo CORTICELLI

The European Union (EU) exercises its governance based on a «multi-level» system where different interdependent, public and private, national and international actors contribute to the decision-making process. Among them, several Non-Governmental Organisations (NGOs) work in advocacy and lobbying activities. Some NGOs have fuelled the debate on natural resources and armed conflict, thanks to a search for information and the publication of many reports. This path has prompted several NGOs to seek to influence the EU Conflict Minerals Regulation approval process.

Analysing the work of these NGOs, this thesis aims to understand the legitimation strategies behind their actions and attempts to explicate the extent to which they contribute to the acceptance of new norms and values. In particular, we try to understand the legal ways that allow them to act and the strategies through which NGOs mobilise the public opinion. Thus, the thesis traces the political, social and economic events that have characterised the East of the Democratic Republic of the Congo (DRC) since the 1990s as directly connected to the conflict minerals issue.

The empirical research highlights the relationships between different NGOs; between NGO and legislator; between NGOs and other actors. The interviews carried out in the East of the DRC and in Brussels allow us to trace some of the legitimation strategies of NGOs. The thesis explains how information is processed, discussed and produces a discourse deemed «legitimate», thanks to collaborative work between NGOs from different countries.

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February 2021

A thesis submitted by
Giacomo CORTICELLI
in fulfilment of the requirements for the degree
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"Who pays the price of two elephants fighting? The grass below"¹.

¹ Interview with FURAHA F., Manager of natural resources observatory at CDJP, 11/12/2017.

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List of abbreviations and acronyms

3TG	Tin, Tantalum, Tungsten and Gold
ACP	African, Caribbean and Pacific Group of States
AFD	French Development Agency
AFDL	Alliance of Democratic Forces for the Liberation of Congo-Zaire
APRODEPED	Action pour la promotion et la défense des droits des personnes défavorisées
AUF	Agence Universitaire de la Francophonie
ASM	Artisanal and Small-Scale Mining
ASSODIP	Association pour le Développement des Initiatives Paysannes
AU	African Union
BEST	Bureau d'Etudes Scientifiques et Techniques
BFASS	British and Foreign Anti-Slavery Society
BGR	Institute for Geosciences and Natural Resources
BRICS	Brazil, Russia, India, China, South Africa
BSP	Biodiversity Support Program
CDJP	Commission Diocésaine Justice et Paix
CEGEMI	Centre d'expertise en gestion du secteur minier
CERN	Commission Episcopale pour les Ressources Naturelles; Episcopal Commission for Natural Resources
CENCO	Conférence Épiscopale Nationale du Congo
CIDSE	Coopération Internationale pour le Développement et la Solidarité; International Cooperation for Development and Solidarity
CJP	Commission Justice et Paix Belgique Francophone
CPS	Comité Provincial Suivi activités minières
CREDDHO	Centre de Recherche sur l'Environnement, la Démocratie et les Droits De l'Homme
CREF	Réseau pour la Conservation et la Réhabilitation des Ecosystèmes Forestiers
CRESA	Centre de Recherches et d'Etudes Strategiques en Afrique centrale
CRONGD	Conseil Régional des Organisation Non Gouvernemental de Développement
CSO(s)	Civil Society Organisation(s)
DEVCO	Directorate-General for International Cooperation and Development
DFID	Department for International Development
DG(s)	Directorate-General(s)
DRC	The Democratic Republic of the Congo
EC	European Commission
ECHO	European Commission's Humanitarian Aid and Civil Protection department; European Community Humanitarian Aid Office
ECOSOC	United Nations Economic and Social Council
EEAS	European External Action Service
EESC	European Social and Economic Committee
EITI	Extractive Industries Transparency Initiative
EP	European Parliament
EPP	European People's Party group
EPRM	European Partnership for Responsible Minerals
EU	European Union
EURAC	European network for Central Africa
FARDC	Forces Armées de la République Démocratique du Congo
FAO	Food and Agriculture Organization of the United Nations
GATT	General Agreement on Tariffs and Trade

GATT-RN	Groupe d'Appui à la Traçabilité et à la Transparence dans la gestion des Ressources Naturelles
GDP	Gross Domestic Product
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit; German Corporation for International Cooperation
ICGLR	International Conference of the Great Lakes Region
ICRC	International Committee of the Red Cross
IDP(s)	Internally Displaced Person(s)
IGO(s)	Intergovernmental Organisation(s)
ILO	International Labour Organisation
IMF	International Monetary Fund
INGO(s)	International Non-Governmental Organisation(s)
INTA	EP Committee on International Trade
IOM	International Organisation for Migration
IO(s)	International Organisation(s)
IR	International Relations
IRC	International Rescue Committee
ITRI	The International Tin Research Institute
JTRS	Joint Transparency Register Secretariat
KU Leuven	Katholieke Universiteit Leuven; University of Leuven
LED	Light-Emitting Diodes
LSM	Large Scale Mining
MEP(s)	Member(s) of the European Parliament
MNC(s)	Multinational Corporation(s)
MS(s)	Member State(s)
MSF	Médecins Sans Frontières; Doctors Without Borders
NGO(s)	Non-Governmental Organisation(s)
NGDO(s)	Non-governmental Development Organisation(s)
NPO(s)	Non-Profit Organisation(s)
OECD	Organisation for Economic Cooperation and Development
OGP	Observatoire Gouvernance et Paix
OHCHR	Office of the United Nations High Commissioner for Human Rights
OXFAM	Oxford Committee for Famine Relief
OSCMP	Observatoire de la Société Civile Congolaise pour les Minerais de Paix
RBRN	Réseau Belge Ressources Naturelles
REE	Rare-Earth Elements
RIO	Réseau d'Innovation Organisationnelle
RPF	Rwandan Patriotic Front
SME(s)	Small and Medium-sized Enterprise(s)
UCB	Université Catholique de Bukavu; Catholic University of Bukavu
UN	United Nations
UAntwerpen	Universiteit Antwerpen; University of Antwerp
UCL	Université Catholique de Louvain-La-Neuve; University of Louvain
UGent	Universiteit Gent; Ghent University

UNamur	Université de Namur; University of Namur
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	United Nations High Commissioner for Refugees
UNIDO	United Nations Industrial Development Organization
UNSC	United Nations Security Council
UK	United Kingdom
USA/US	United States of America
USAID	United States Agency for International Development
USD	United States Dollars
WB	World Bank
WHO	World Health Organization
WTO	World Trade Organization
WW1	World War one
WW2	World War two

Introduction: NGOs actions and new legal paradigm

"Social and political events are always the product of interests of powerful economic lobbies, industry or politics, or even of nations or coalitions of countries that influence or address the social dynamics. That being the case, we have to wonder what forces led to the emergence and growth of certain phenomena"².

² MASTO R. *Califfato nero*, Editori Laterza, 2016, p.160.

Background

The actions of Non-Governmental Organisations (NGOs) which have led to a growing awareness, public mobilisation and pressure on the European Union (EU) institutions regarding the problem of blood minerals, began long ago. One research by Global Witness, which highlights the link between the exploitation of natural resources and violence in the Democratic Republic of the Congo (DRC), was published in the early 2000s³. This led directly to United Nations (UN) investigations and reports published between 2001 and 2003⁴.

This research began precisely in the 90s, a decade that shocked the whole African Great Lakes region. The upheavals and regime change in Rwanda led to the displacement of huge masses of the population in this region. The DRC has been totally involved in these events whose consequences are still evident today. Its subsoil regurgitates resources of all kinds and many actors take advantage of it to get rich. The consequences have been devastating for the territory, the population and the whole country. The atrocities committed, extreme poverty and levels of violence have no equal on the planet. The work of numerous local and international NGOs (INGOs) fit into this context. After massive humanitarian interventions and the sometimes suffocating presence of international organisations (IOs) in the 1990s, local civil society has risen. Their work has been instrumental in trying to influence some laws. Indeed, these NGOs have taken the initiative to launch the debate on the connection between the exploitation of natural resources and armed conflict.

On the basis of these initial observations, we have built this thesis. The constituent elements are presented in this first introductory chapter. First, the research questions are explained and contextualised. Afterwards, it is explained why the DRC and the EU regulation on conflict minerals were chosen as a case study⁵. We will then explain the research methodology and the literature on which it is based. It is exposed the research plan as well. Later on, all this elements will allow us to understand how the actions of NGOs have been able to influence a new legal paradigm.

³ GLOBAL WITNESS *Zimbabwe's resource colonialism threatens regional peace process - Global Witness calls on Joseph Kabila to stop secret timber deal*, 26/8/2001.

⁴ AUTESSERRE S. *Dangerous tales: Dominant narratives on the Congo and their unintended consequences*, African Affairs, 2012, p.210.

⁵ EU Regulation 2017/821 of the European Parliament and of the Council of 17/5/2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas.

1. Contextualisation and understanding

In exploring the existing literature about the role of NGOs and their discourse concerning conflict mineral initiatives, we quickly discover the inter-disciplinary nature of the theme. In fact it goes through many disciplines of social sciences, especially: international relations (IR), economy, geology and communication, as well as law and history. Starting from the different approaches in IR, contributions from other disciplines will allow us to broaden the scope of the study and provide a complete scenario.

This research will study the legitimization strategies of NGOs to develop the acceptance of norms and values, especially with policy makers and the public. It is important to specify that by the word legitimization we mean the process of providing legitimacy. This thesis explores as well how the actions of NGOs are legitimised and how this legitimacy in turn can influence the law-making process. So when we talk about the legitimacy of NGOs we mean that their actions are recognised and deemed by other actors and by the law.

In particular, this study will focus on the activities and the impact of the NGOs work during the establishment of the conflict mineral initiatives from 2000 to 2017. This study aims to answer the following question: what legitimization strategies can NGOs use to make new norms accepted by the legislator?

The investigation focuses on a group of NGOs whose actions aim at influencing the conflict mineral initiatives. These NGOs work across the North-South divide: fighting poverty, providing humanitarian aid, promoting human development, human rights and security. The focus is on NGOs, "whose primary purpose is to defend or promote a specific cause and who seek to influence the policies and practices"⁶ of IOs and governments. These NGOs share "the use of 'soft power' in global politics"⁷ and they aim at changing agendas and norms of national governments and of IOs and institutions.

We learned from the literature that "discourses create social 'reality' through the production of concepts, objects and subject positions, which shape the way in which we understand the world and

⁶ PETERS, D. H. et al. *Improving health service delivery in developing countries: from evidence to action*. World Bank Publications, 2009, p.312.

⁷ HOWELL J. *Global matters for non-governmental public action*, Palgrave Macmillan, 2012, p.93.

react to it"⁸. In our specific case, NGOs produce their discourse in a specific context, which is that of the IOs and through this discourse they exercise lobbying. To build this discourse, they employ different strategies; they collaborate with other NGOs, they seek information, they take positions, they express their positions to the legislator. We will therefore call this process the discursive strategy of NGOs. This process includes all the actions carried out by NGOs that serve to build a discourse aimed at political lobbying of IOs.

1.1. The case study

As a case study, the South Kivu province of the DRC was chosen, primarily for the central and strategic role that this region plays in international initiatives concerning minerals extraction and trade, thanks to its huge presence of mineral resources and the strong commitment of the states, donors and NGOs in the region. We will analyse the construction of the discourse of NGOs in lobbying, advocacy, policy-making and policy-implementation, in order to understand how these activities have contributed to shape the conflict mineral initiatives. Specifically, we will focus our attention on the EU regulation on conflict minerals. We will analyse how the strategies of NGOs have developed legitimacy which allows them to work alongside the European legislator.

Concerning the case of the DRC, we will underline the long crisis that has caused at least 5,4 million deaths since 1998⁹, the date considered the beginning of the Second Congo war, also known as Coltan War, Great African War, or African World War. Furthermore the DRC is known for having the world's largest reserves of coltan (short for columbite–tantalite and known industrially as tantalite), the most important material for the production of electronic devices. The business of coltan contributes to the war economy financing armed groups and the national army as well (FARDC - *Forces armées de la République Démocratique du Congo*), as established from several field researches, often commissioned by NGOs¹⁰. This is the reason why the United Nations Security Council (UNSC) has issued an arms embargo; asset freeze and travel ban on the DRC

⁸ HARDY C., PALMER I., PHILLIPS N. *Discourse as a strategic resource*, Human relations, 2000, pp.1233-1234.

⁹ And until 2007, according to the International Rescue Committee (IRC). The IRC is a global humanitarian aid, relief and development nongovernmental organisation that has done four studies on mortality in the DRC between 1998 and 2004. The methodology of these studies crosses the epidemiological data with some estimates of population growth and thus have sometimes been criticised.

¹⁰ Cf. SUTHERLAND E. *Coltan, the Congo and your cell phone*, Available at SSRN 1752822, 2011, pp.5-6; WHITMAN S. *Sexual Violence, Coltan and the Democratic Republic of Congo*, In: Natural Resources and Social Conflict. Palgrave Macmillan UK, 2012, pp.128-151; MIHO T. *Coltan Mining and the conflict in the Eastern Democratic Republic of Congo (DRC)*, CDRQ Vol.1, 2015, p.31.

which lasted until July 2016¹¹. The UNSC has also extended the mandate of the Expert Group assisting the Sanctions Committee. However, in the last decade, we notice that the international community, especially the EU, the UN, the World Bank (WB) and the United States of America (USA) have supported several programmes for empowering governance in the DRC¹². These interventions have been motivated, at least in part, because the DRC, part of the 'bottom billions countries' find themselves in a 'natural resources trap'.

According to Collier¹³, the lack of transparency and fragile or absent governments could drag down the country from one economical, political and social crisis to another, and perpetually hinder economic growth despite huge natural resources. Since 2001, the EU has increased initiatives to reform the security sector and encourage a democratic electoral process, while strongly supporting development cooperation and humanitarian aid¹⁴. However, the lack of political will and the persistence of opaque practices are obstructing or delaying the development of good practices¹⁵. In effect, policies introduced by the EU have indeed been undermined by the local "non-state governance" and existing procedures¹⁶. In fact in some areas of the DRC the state is collapsed or absent and "non-state actors such as businessmen; militias, youngsters, customary authorities" participate "in local decision-making process and regulate access to markets and resources"¹⁷.

This thesis analyse the legitimacy and the impact of the NGOs strategies, especially advocacy and lobbying activities, in order to determine their influence on the EU regulation on conflict minerals, which indirectly aims at empowering governance in the mining sector, promote best practices and raise "awareness of the issue of conflict finance"¹⁸. The governance of the mineral sector is promoted by several initiatives. The aim of this thesis is not to analyse the texts or the effects of

¹¹ UNSC, S/RES/2198 adopted on 29/1/2015.

¹² BURKE-WHITE W. W. *Complementarity in Practice: The International Criminal Court as Part of a System of Multi-level Global Governance in the Democratic Republic of Congo*, Leiden Journal of International Law, 2005, vol. 18, no 03, pp.557-590;
MAZALTO M. *La réforme des législations minières en Afrique et le rôle des institutions financières internationales: la République Démocratique du Congo*, Annuaire de l'Afrique des Grands Lacs, 2004, vol. 5, pp.7-31.

¹³ COLLIER P. *The Bottom Billion: Why the Poorest Countries are Failing and What Can Be Done About It*, Oxford University Press, 2007.

¹⁴ HOEBEKE H., CARETTE S., VLASSENROOT K. *EU support to the Democratic Republic of Congo*, Centre d'analyse stratégique, 2007, pp.1-18.

¹⁵ ROSEMBUKA F. M. *Vers une 'bonne gouvernance' du secteur minier de la République démocratique du Congo?*, Alternatives Sud, vol. 20-2013, pp.99-118.

¹⁶ RAEYMAEKERS T., MENKHAUS K., VLASSENROOT K. *State and non-state regulation in African protracted crises: governance without government*, Africa Focus, 2008, vol. 21, no 2, pp.7-21.

¹⁷ *Ibidem*.

¹⁸ PARTZSCH L. *The new EU Conflict Minerals Regulation: Normative Power in International Relations?*, Global Policy Volume 9, Issue 4, November 2018, p.486.

these laws, but to understand how NGOs have influenced the legislative process. So as an example, we will consider: the International Conference on the Great Lakes Region (ICGLR), the Extractive Industries Transparency Initiative (EITI), the principles of the Organisation for Economic Cooperation and Development (OECD) Due Diligence guidance for responsible business, the Dodd-Frank Act, the Kabila's minerals export ban and the EU regulation on conflict minerals.

Before introducing the chapters we will first go through the research focus; later we will review the state of the art; then we will explain the methodology, introducing the importance of the field research in order to verify the hypothesis; finally we will draw some preliminary conclusions.

1.2. Research focus

This research is focused on the legitimacy of NGOs in influencing the EU regulation on conflict minerals. We will focus on the actors who have had a role and an impact in the law approval process. The region identified for the field research and the backbone of the research methodology, is the eastern DRC. The huge presence of mineral resources and the strong commitment in the region of international community, especially donors and NGOs, allow an in-depth study because many actors are concentrated in a small area, making the observation of all the elements interacting together easier to discern than in other areas. And with the aim of completing the field research, we will also do interviews with the actors who have interfaced most with the European legislator, therefore in the city of Brussels, in Belgium.

For sake of clarity, we have identified first some NGOs to be considered within this study. These have been chosen within associations, foundations and other private institutions that have "a non-profit-making aim of international utility...(and)...carry on their activities with effect in at least two States"¹⁹. These NGOs should be altruistic and committed to achieve wide humanitarian aid, human rights, environmental and development goals. These NGOs need to be clearly engaged on conflict minerals issue. To complete the study, other actors were finally chosen for having played an important role in the process of conception, study and approval of the law.

Analysing the work of these NGOs, we will aim to understand the legitimization strategies behind their actions which develop and influence the acceptance of new norms and values: in particular, we

¹⁹ European Convention on the Recognition of the Legal Personality of International NGOs, 24/4/1986, Strasbourg, Art.1.

will try to understand the legal ways that allow them to act and also the strategies through which NGOs create consensus through the public opinion. After having selected and interviewed the most engaged NGOs, we will analyse the initiatives and legislations that preceded the EU regulation on conflict minerals. This initiative has been chosen as the most relevant for our study. While it will be useful to consider and compare other various similar initiatives, the focus of this research is on EU law. Greater emphasis will subsequently be given to the lobbying activities carried out by NGOs in Europe and to the EU institutions.

1.3. The EU conflict free minerals initiative

Many natural resources are essentials for technologies which we use every day. The extraction of these natural resources often fuels violence and conflict²⁰. In fact during at least the last decades, the mineral trade has played a central role in financing conflicts. The revenue coming from the control of mining sites and mineral trade in general has increased the power of armed groups who are responsible for serious violations of human and workers rights. This situation represents a threat for the stability of the region and, consequently, is a concern for EU affairs. It is in the interests of the EU to protect the supply chain in order to ensure the regular supply of raw materials to furnish its enterprises. However, before to proceed further, it is necessary to clarify what we mean by raw materials. This thesis will deal exclusively with "non-energy raw materials which includes metallic minerals, industrial minerals and construction minerals. Energetic raw materials, like crude oil, natural gas, brown coal, or hard coal are not discussed"²¹. These minerals are necessary to produce parts of mobile phones, laptops, cars, aeroplanes, medical equipment, etc. as we shall see later on in this thesis.

The European Commission (EC) proposed in March 2014 a regulation to ensure a responsible supply chain for companies or Multinational Corporations (MNCs) operating in the EU, particularly if they trade in areas deemed at risk, mostly plagued by endemic armed conflict. The objective was to break the link between natural resources and conflict by ending the import of minerals that finance armed conflicts. EU institutions have worked on the elaboration of a regulation to establish a system that would certify the supply chain and support the import of 'conflict free' minerals. According to the regulation, the main objective of this initiative is to reduce the financing of armed

²⁰ BRUNNSCHWEILER C. N., BULTE E. H. *Natural resources and violent conflict: resource abundance, dependence, and the onset of civil wars*, Oxford Economic Papers, 2009, pp.651-674;
VAN DER PLOEG F. *Natural resources: Curse or blessing?*, Journal of Economic Literature, 2011, 49.2, pp.366-420.

²¹ TIESS G. *General and International Mineral Policy, Focus: Europe*, SpringerWienNewYork, 2011, p.1.

groups and security forces that control illegal trafficking. The proposal is being discussed by the EC, the Council and the European Parliament (EP). These negotiations take the form of tripartite meetings: the trilogues²². The first draft proposal, which has been voted on by the EP on May 20th, 2015, officially aims to making the access to resources easier for EU based companies, encouraging legal trading channels. EU importers would be able to exercise 'due diligence' by following the five steps of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-affected and High-Risk Areas: I) establish strong company management systems; II) identify and assess risk in the supply chain; III) design and implement a strategy to respond to identified risks; IV) third-party audit of smelters/refiners' due diligence practices; V) report annually on supply chain due diligence. The guidelines provide "management recommendations for importers, processors, and consumers of Congolese minerals" and "a practical roadmap for companies who want to keep conflict minerals out of their supply chains"²³.

According to the explanatory statement attached to the draft EP legislative resolution, "the EU is the largest market for tin, tantalum, tungsten and gold" (3TG) with more than 400 importers²⁴. The rapporteur underlines "that the EU regulation 'should cover all Conflict-Affected and High Risk Areas (...)'. This approach is similar to that of the OECD Guidance, while it differs from the US Dodd Frank Act, which so far only focuses on the Great Lakes Area"²⁵. According to an EC report of 2013 the initiative should "ensure that the financing of armed groups in conflict-affected and high-risk areas is reduced", while a multi-stakeholder approach will be "encouraged to foster responsible sourcing". The draft proposal explains that companies participating in this scheme on a voluntary basis "will gradually enlarge due to market competition pressures"²⁶. In 2015, an official close to an EP vice president declared that "no law will be approved in the next two years at least"²⁷. However, NGOs and other lobbying organisations have put pressure on EU officials, with each side defending their own interests during negotiations, to move faster and stem the conflict. It is

²² "Trilogues are informal tripartite meetings on legislative proposals between representatives of the Parliament, the Council and the Commission. Their purpose is to reach a provisional agreement on a text acceptable to both the Council and the Parliament. They may be organised at any stage of the legislative procedure and can lead to what are known as 'first reading', 'early second reading' or 'second reading' agreements, or to a 'joint text' during conciliation".

Cf. EU Trilogues explained; consulted on 21/9/2019; www.europarl.europa.eu.

²³ ENOUGH PROJECT *What are Due Diligence Guidelines?*, Consulted on 17/5/2015; www.enoughproject.org/conflict-minerals.

²⁴ *Cf. EU Report A8-0141/2015*; consulted on 21/5/2015; www.europarl.europa.eu.

²⁵ *Ibidem*.

²⁶ EC Directorate-General for Trade, *Report on the public consultation on a possible EU initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas*, contributions from stakeholders, July 2013; consulted on 9/5/2015; www.trade.ec.europa.eu.

²⁷ ANONYMOUS interview to an assistant to a Member of the EP (MEP), Group of the Progressive Alliance of Socialists and Democrats, 8/5/2015.

probably also because of these pressures that the EU institutions finally approved a law in 2017, contrary to what was stated by the slightly more sceptical source mentioned above. An EC official told us that:

"this regulation is certainly the result of a compromise between different actors, with different relationships of force. It is also necessary to keep in mind that the law does not claim to want to be perfect. It can certainly be improved, but it is the best that we have managed to achieve, precisely, following the logic of compromise. The Directorate-General [DG] Trade was the leader for this regulation. It has dealt with consulting a large number of actors, stakeholders, including others DGs of the EC, the Council, the EP, many civil society organisations (CSOs), the associations representing industry interests, etc. And finally made a decision, in agreement with the other commissioners"²⁸.

The work to produce a text lasted nevertheless several years, as the legislator took account of the various positions. For example according to the first proposal of the EC, the mechanism of self-certification of supply chain for minerals was not intended to be compulsory for companies. All NGOs considered by this study have underlined in several statements and remarked in our interviews, the need of a strict law for companies, forcing them to provide detailed information on the supply chain, etc.. Finally the law is not so strict, as NGOs asked, "but at least something has been done"²⁹. According to Geenen, greater transparency in the supply chain and the legalisation of the informal mining should be implemented as well³⁰, the same position of NGOs when they "invite the Commission to develop additional tools and guidance"³¹.

To conclude, the law approval process officially started in 2014 and ended in 2017, but the regulation will come into force in 2021. The examples quoted above have shown us how it was the result of a compromise between various actors, who have pressured, according to their power and legitimacy. The aim of this thesis is to understand what are the legitimisation strategies of NGOs to develop the accepting of new norms and if their legitimacy influenced the EU regulation. To understand this, it will be necessary to reconstruct the research, studies, networking, advocacy and lobbying work of various NGOs and examine how they transmitted their positions to the legislator.

The following paragraph briefly illustrates some of the main activities of NGOs in the Great Lakes

²⁸ ANONYMOUS interview to an EC Policy Officer, private sector, DG DEVCO. 23/4/2019.

²⁹ Interview with CIOFFO G., Programme and Policy Officer at EurAc, Brussels, 27/2/2019.

³⁰ GEENEN S. *A dangerous bet: The challenges of formalizing artisanal mining in the Democratic Republic of Congo*, Resources Policy, 2012, vol. 37, no 3, pp.322-330.

³¹ NGO Coalition Briefing, *EU regulation on responsible mineral sourcing: implementing the Parliament's proposed due diligence system*, October 2015.

region, where the work of NGOs, began.

1.4. NGOs in the Great Lakes region: where the lobbying began

"Congo's minerals are exported, smelted, and sold internationally, where they end up in cell phones, laptops, or as pieces of jewellery. We know that some of these minerals sourced from conflict-areas have funded violence, abuses, and corrupt criminal networks. And yet, the response of international companies and states has been too slow and timid to make the necessary fundamental changes"³².

NGOs are applying pressure to end the conflict that has resulted in millions of deaths, the rape of hundreds of thousands of women and provoked mass displacement of people in most of the DRC, including the Kivu regions. The report of the mapping project of the Office of the United Nations High Commissioner for Human Rights (OHCHR) has well documented the evidence of serious violations perpetrated by all the actors involved in the conflict, at least during the period 1993-2003³³. The report provides evidence, among other things, to demonstrate the interconnection between conflict and exploitation of resources. Experts point out that: "an awareness of this interconnection has only developed over the last few years and, with the exception of studies conducted by some historians and economists, detailed documentation of the multiple facets and effects of this exploitation has only been available since around 2000, in response to research and campaigning work conducted by Congolese and international NGOs"³⁴. From this we realise that even the agency of the UN recognises the role and responsibility of NGOs in some investigative works and lobbying activities. In the literature review on NGOs we will explore how the UN has adopted legal mechanisms to encourage the participation of NGOs, thus giving them an official avenue of legitimacy. Given that the UN also has relations with NGOs, their legitimacy has grown during this period, particularly concerning the capacity of investigation and conflict analysis with a certain degree of influence throughout the public, especially private donors, who have access to information. The same possibility was not guaranteed by the media, as the conflict was not easy to

³² MUKWEGE D., Surgeon and Medical Director of the Panzi Hospital in the DRC, foreword to the report: GLOBAL WITNESS, AMNESTY INTERNATIONAL *Digging for Transparency. How U.S. companies are only scratching the surface of conflict minerals reporting*, April 2015, p.2.

³³ HAUT-COMMISSARIAT AUX DROITS DE L'HOMME DE L'ONU (HCDH) *République démocratique du Congo 1993-2003 - Rapport du Projet Mapping concernant les violations les plus graves des droits de l'homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo*, Rapport du projet mapping de l'ONU, août 2010.

³⁴ UN OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR) *Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003*, August 2010; consulted on 13/11/2016; www.refworld.org/docid/4ca99bc22.html.

cover and the interest of the mainstream information was not always on African conflicts. Although the results of the research may be slightly different, even for political reasons, the various analyses are intertwined, so the visibility and legitimacy of NGOs increases. For example, several NGOs, research centres and academics have demonstrated within several studies that natural resources intensify and perpetuate conflict³⁵. Furthermore, armed groups in addition to controlling mining sites are also burdening workers, shopkeepers, local traders and directly taxing local products, transportation routes and other businesses. The Congolese army, poorly equipped, disorganised and without decent wages, have also been implicated in illegal trafficking. Researches from IPIS (a research centre that adheres to the EurAc network) have documented a considerable number of human rights violations and many other different crimes throughout the region. Mapping the conflict motives IPIS states that "the FARDC are especially notorious for their direct and indirect involvement in the illegal traffic of mineral resources and other goods"³⁶.

In order to counter this paradigm, NGOs are trying to demonstrate to donors that it is possible to change the current situation by promoting a 'conflict free' market. Since the beginning of the crisis in the Great Lakes region, several groups of NGOs have been putting pressure on institutions through their lobbying and advocacy activities.

The crisis in Kivus started in 1994 with the massive exodus of refugees fleeing from the tragic events in Rwanda. From that moment several NGOs started working in the region, first of all in humanitarian actions, but later with studies and investigations. In 1996 attention grew because of the foreign invasion of Zaire³⁷ led by Rwanda, officially for fighting the rebels responsible for the genocide³⁸. In 1998, with the Second Congo War, the attention of civil society and NGOs was at the highest point. So NGOs focused their attention and concentrated a lot of resources in Kivu with two main objectives: I) to keep the spotlight on the Congolese tragedy that, according to many estimates, has caused at least 5,4 million deaths since 1998³⁹; II) to keep the pressure on political

³⁵ FISHER S. *A l'Est de la RD. Congo, briser le lien entre conflits et ressources naturelles*, Analysis 2014, Commission Justice et Paix, Bruxelles.

³⁶ SPITTAELS S., HILGERT F. *Mapping conflict motives: Eastern DRC*, Antwerp: IPIS, 2008, p.12.

³⁷ The Republic of Zaire was the name of the DRC between 1971 and 1997.

³⁸ KENYON LISCHER S. *Dangerous Sanctuaries, Refugee Camps, Civil War, and the Dilemmas of Humanitarian Aid*, Cornell University Press, 2006.

³⁹ According to International Rescue Committee (IRC) "the five principal causes of death in the East and West were fever/malaria, diarrhea, respiratory infections, tuberculosis and neonatal conditions". The IRC "estimated that 3,9 million people had died since 1998, arguably making DR Congo the world's deadliest crisis since World War II. Less than ten percent of all deaths were due to violence, with most attributed to easily preventable and treatable conditions such as malaria, diarrhea, pneumonia and malnutrition".

Cf. COGHLAN B., et al. *Mortality in the Democratic Republic of Congo: An ongoing crisis*, International Rescue Committee and Burnet Institute, New York and Melbourne, 2008, p.ii and p.7.

institutions whose decisions directly affect the everyday life of millions of people⁴⁰.

During the period of the Second Congo War and the approval of the Dodd-Frank Act in 2010, NGOs were studying the 'conflict mineral' issue. Several statements such as documents and official positions demonstrating some truth about this complex crisis are available and we will use them for documenting this thesis. These materials show how tensions undermine not only mining sites, but also land; human rights, identity, regional power struggles and the fundamental weaknesses of the DRC state. Mineral resources play a central role in the dynamics of the conflicts in the African Great Lakes region. Despite the troubles, MNCs "continue to purchase minerals from the war zone, providing crucial fuel for the violence"⁴¹.

Up to this point, let us present the methodological basis with which this research was carried out.

2. Methodology

The methodology adopted for this research is divided in three main axes: literature review; field research; analysis of a specific case study. These three axes have been developed directly from the research design. According to the definition provided by the book "Designing social inquiry", we state that "a research design is a plan that shows, through a discussion of our model and data, how we expect to use our evidence to make inferences. Research designs in qualitative research are not always made explicit, but they are at least implicit in every piece of research"⁴². The research design leads to rich and in-depth empirical results, even if sometimes not organised or systematically classified. These results and other information are presented in the form of a narrative, which allows us to understand the new reality presented.

This research design is composed: first, by the choice and definition of the problem; the issue adopted from the outset is of an empirical nature and not theoretical. It was in fact decided immediately to focus on the NGOs that carried out lobbying to try to influence the EU regulation on conflict minerals.

Second, by the theoretical research carried out and compatible with the empirical case; the choice of

⁴⁰ Cf. Rete pace per il Congo; accessed on 29/5/2015; www.paceperilcongo.it/chi-siamo.

⁴¹ SULLIVAN D., ATAMA N. *DRC. Digging In: Recent Developments on Conflict Minerals*, Enough, 2010, p.1.

⁴² KING G., KEOHANE R., VERBA S. *Designing social inquiry: Scientific inference in qualitative research*, Princeton university press, 1994, p.118.

the theoretical case was arduous and widely debated. Eventually, it was decided to focus on the question of legitimacy. This choice is ideal for answering key questions, such as: what are the legitimisation strategies of NGOs to make a norm accepted? What legitimises a position or a proposal from an NGOs in order to modify a standard? We also reasoned about the importance of working on the topic of legitimisation strategies, as it is little explored when compared with the power represented by NGOs. It is a current topic that will allow the author to present himself as a lobbying expert of NGOs, of their ability and legitimacy in influencing public policies and finally as an in-depth connoisseur of the conflict minerals issue.

Third, by the selection of the most important and relevant cases and their conceptualisation; in this case the choice was to identify the main actors, the NGOs and the EU institutions, as well as their major interactions that have occurred during the process of approval of the EU regulation. The network of NGOs that acted to influence the norm was therefore rebuilt. We also discussed the balance of power between the various players, the exchanges and the relationships that characterise their work towards a common goal. However, it is important to specify that the definitions of these concepts are very flexible, since some of them are defined during the research. This is a recurrent procedure in qualitative research, since the empirical problem allows us to revisit some concepts even later.

Finally, the method has been conceived to answer the research questions with specific interviews, aimed at understanding the work of the various actors. These interviews took place with the instrument of a fixed questionnaire. The interviews were carried out mainly in the east of the DRC, where many NGOs work on the issue of conflict minerals and in Brussels and where NGOs specialising in lobbying work at EU institutions are based.

The relationship with the actors made it possible to have a representative sample of the established reality. The first contacts with NGOs, already known by the author, have allowed us to discover and work with a large part of the NGOs affected by the issue of conflict minerals. It is also this discovery of the actors, especially during the field research, that allowed us to define some concepts during the investigation. In addition, it allowed us to select the most significant data and to highlight the most representative interactions. It is important to point out that the contacts with the actors were sustained and intense and allowed to develop a more complete vision of the analysed problem.

2.1. Literature review and theoretical framework

As stated from the outset, this research was undertaken to investigate the legitimization strategies of NGOs actions that could make a norm accepted. This research began because of an author's sensitivity to a specific social problem, namely human rights abuses in the eastern DRC. Following a first trip to the region, the complexity of the situation was quickly acknowledged. There are many actors involved and their actions have an international character. During a first exploratory journey, it was found that their economic, political and social consequences are extraordinary. Furthermore, our attention was immediately drawn to the large number of NGOs in the eastern DRC. The attention was concentrated in this area as if in correlation to the concentrated and growing numbers of public and private actors such as companies; MNCs, armed groups, IOs, NGOs, governments and others. It therefore seemed an extraordinary centre of intertwining of international relations, given the presence of resources, various interests, many different actors and conflicts. The deepening of these problems therefore seemed very interesting reason why we started more detailed research.

We therefore worked on two steps in reviewing the literature. In a first phase we explored the work researches have already done on the eastern Congo, distinguishing the most influential and the most recent literature. It was a useful passage to broaden the knowledge on the problems connected to the region. This starting point can partially explain the phenomenon of the presence of NGOs observed in the east of the DRC, their work of searching for information aimed at lobbying activities and their interests in trying to influence the EU regulation. The second phase of readings was necessary to build a research problem. Many other readings have then allowed a process of refining it. All these readings have therefore allowed us to focus on expanding a basic theoretical concept around the questions of legitimacy and legitimation.

2.2. Field research method

The field research is the main pillar of the methodology adopted by this thesis. The qualitative interview, as an essential method of empirical research, has been adopted to produce the answers to the research question. The interviews conducted for this thesis represent the fundamental method for collecting recent and new information to feed the case study. The information gathered through the interviews is able to give effective feedback to abstract theories and to facilitate answers to questions about a complex reality. Among the various research techniques adopted and included in this study, we have especially used: the analysis of a specific case study; in-depth interviews to

understand the specific case; the examination of some documents as a sample for the confirmation of hypotheses.

It was necessary to undertake a field study to the eastern DRC: it allowed us to understand the need for a EU regulation as well as the efforts of the work of NGOs in lobbying, advocacy, researching, networking, documentation and others activities. The interview is one of the most widespread techniques for qualitative research. In our case the starting point is a fixed questionnaire, which allowed us to collect the reflections of the interviewees, generating empirical knowledge. In addition to responding to specific questions, the interviewees focused on particular topics or details that in a first phase did not seem relevant. In this way information, even if did not seem to be a priority according to the research project, was gathered and finally proved to be extremely important. For these reasons, in our research, we consider the interviews as semi-structured. While orienting the interviewee, he/she was left with free space to be able to express his/her visions, his/her criticisms and his/her ideas for the future. The possibility for the interviewees to have a margin of space for their reflections, allowed them to understand the meaning that they attribute to the external world, to their own participation in it and to reconstruct identities and emotions that concern their social models.

The field research was supported by the CEGEMI (*Centre d'Expertise en Gestion Minière*) of the Catholic University of Bukavu (UCB), in the DRC, which has officially and actively collaborated. CEGEMI's area of study concerns problems strictly related to the mining sector in eastern Congo, such as the handcrafted and industrial exploitation of minerals, governance systems of natural resources, the political economy of the Great Lakes region, the rural and agricultural economy but also poverty and land conflicts. The collaboration will represent a strong asset during all this research and an important exchange between Universities. It is also important to note that the research institute was founded thanks also to the efforts of some Flemish Universities of Belgium. In partnership with the UCB, the University of Leuven (KU Leuven) is coordinating the programme, in association with the Ghent University (UGent) and the University of Antwerp (UAntwerpen). The main theme of this inter-university cooperation project with UCB is "resource management in Kivu as part of post-conflict reconstruction"⁴³. In South Kivu, they lead research in various areas, especially into farming and mining, with promising results. Thanks to the cooperation with the UCB, empirical evidence has been analysed qualitatively with the data collected through fourteen interviews with organisations or specialists in the cities of Bukavu and Goma, in the DRC.

⁴³ Cf. CEGEMI Inter-university cooperation project; www.cegemi.com.

The first contacts in order to reach the most important actors working in the region on these issues, was suggested by the CEGEMI, in particular from Professor Paul-Robain Namegabe⁴⁴.

The questionnaire, submitted to people working with conflict minerals issues, has been used in order to evaluate the discourse as well as the positions of NGOs or other CSOs during the establishment of the conflict mineral initiatives, with the focus on EU regulation. Another attention of the investigation is concentrated on the modalities of NGOs engaged in influencing the conflict mineral initiatives. We have considered networks of NGOs which have determined the creation of information and official positions taken during lobbying and negotiation process. Finally we have included some factors which have contributed to make the work of lobbying more efficient (or weaker).

A second group of eleven interviews has been conducted in Brussels. The protagonists of these interviews are both NGOs and actors from institutions, who played an important role in the law approval process. The NGOs based in Brussels work in strict collaboration with NGOs of eastern DRC. They share the information collected for campaigns, meetings, lobbying and advocacy actions. They are also used to sharing work skills, capabilities, workers, targets, objectives and many other things as we will see later on this thesis. In fact it will be demonstrated, also through the use of the qualitative interview, that the NGOs create networks that last over time, work together on various dossiers, consult each other and offer advice between themselves to carry out the most effective actions. For these reasons we have interviewed four actors from three large Brussels-based NGOs who have worked intensively on the issue of conflict minerals. The particularity of these actors is that they have related to both the NGOs of the eastern DRC and to the EU institutions. It can be said that they represent the glue between the legislator and the actors who work on the ground, or rather where the minerals journey begins.

Additionally, to get a more complete idea of lobbying by the NGOs and their legitimacy in carrying out this work, we turned to the institutions of the EU. For this reason we have conducted six further interviews with Members of the European Parliament (MEPs) and EC officials. This passage has allowed us to demonstrate the openness of the EU institutions towards the NGO's lobbyists, thus demonstrating their credibility; legitimacy and importance in the institutional democratic game. Obviously in the next chapters we will also explain and look at the laws that allow lobbyists to intervene and express their position in the EU institutions. In fact, there are clear and written rules,

⁴⁴ Chairman of the Faculty of Law and Director of CEGEMI.

even if there are actually some informal passages that allow an actor to support his own positions to try to influence a law. Finally, to complete our analysis, we have interviewed a member of an association representing industry interests.

In order to find answers to our research question, during the field research, we asked NGOs: how they carry out their work; their position with respect to conflict minerals; the collaborations and iterations on the topic with other actors (including authorities and institutions); the contacts with influential political figures; their main sponsors; the perception of their role, their influence and their legitimacy; the manners by how to find, process and disseminate information; the ways and instruments they had for trying to influence policy makers.

We asked political decision makers, MEPs, parliamentary assistants, EC officials: their way of finding and verifying information; who were the actors with whom they dealt with and with whom they worked directly, during the process of approval of the EU Regulation; their participation in events organised by NGOs or associations representing the interests of the industry; their opinion with respect to studies, reports or position papers received from NGOs and associations representing the interests of the industry.

The responses received allowed us to obtain a series of data that we subsequently compared and analysed. One of the most relevant results obtained with data analysis was that of being able to reconstruct the interactions between the various actors. Understanding who a certain organisation relates to; which networks it is part of and which politicians it has dealt with to try to influence initiatives on conflict minerals, was particularly useful in answering the research question. This work was also a particular innovation, as an analysis of the legitimacy of networks and alliances between NGOs had not yet been carried out. We were able to distinguish organisations that systematically work jointly from those that are formed solely around a particular topic; for a specific period of time and with a specific goal.

Reflecting on the different interactions was particularly important because it allowed us to understand the legitimacy of the actors. In some cases, it was not particularly difficult to distinguish between an influential actor and a less influential one. This is largely because the less influential actor usually deals only with small organisations and has fewer contacts. The comparison undertaken between the various actors has also helped us to understand how some are particularly

motivated by party-related or direct economic interests. For this reason, some statements have been discarded.

2.3. Limits to interviews

Unfortunately we have to point out the limits to these interviews, or rather that of not having been able to interview some actors. In particular we are disappointed that we could not have had access to Global Witness, a very influential actor and directly related to many of the organisations we interviewed. We contacted the organisation's senior campaigner, who responded to our emails after many attempts. She suggested that we look at the information on their website and gave us a whole series of links to consult. However, she did not grant us an interview, even by telephone, as we requested. In addition to the fixed questionnaire that we have submitted to all the other actors, there is a lot of information that we would have liked to ask at Global Witness. In fact this is perhaps the first INGO in the world to have dealt with the relationship between natural resources and conflicts. They are professionals in lobbying and advocacy. The credibility of their research and publications, the widespread distribution of their relationships and the profound ability to carry out large surveys, has allowed this INGO to boast of an unparalleled legitimacy. It would be a mistake to consider the work of Global Witness to be flawless. There are examples where they sometimes get things wrong, especially when they leave advice or recommendations at the end of their publications. Their contribution would have enabled us to examine the question more deeply and it is unfortunate that it is not available. Despite this, however, we managed to reconstruct part of their work, through interviews with actors who worked with them. It was essential. This is primarily because we have to consider their work to be critically important for at least three reasons. The first is their way of working: in fact they know how to carry out research even in the most remote and dangerous regions of the world and then know how to spread the results everywhere. It is a skill and experience factor that has undoubtedly increased their legitimacy and it would have been interesting to understand how they do it. The second is that Global Witness was the organisation that led many small Congolese NGOs in applying political pressure on institutions, both local and international, on the issue of conflict minerals. It would have been invaluable to ask them a few questions about the relationship they have with these small NGOs. The third reason is that Global Witness was one of the four founding organisations of the Core Group, which, as we will see in the next chapters, was fundamental to pressuring the EP and the EC. We have not received any response to our request to submit a questionnaire also from the non-profit organisation Enough Project. This organisation was born with the aim to end crimes against humanity and genocide. Their activities

were particularly intense in the USA to try to influence the Dodd Frank Act. Even at the level of EU institutions, Enough probably played a role but this is not particularly clear to us. This organisation certainly did field research and took a stand based on the results of their research. However, the methods are not explained in the organisation's online documentation and we unfortunately could not ask them directly. In reality this organisation has had an important impact especially in the USA. Their media impact is impressive. However, it should also be emphasised that the organisation has been harshly criticised, both at home and in countries such as the DRC, where they would have huge potential to improve the situation with their activities. The main criticism they received was to be counterproductive for the DRC by carrying out superficial studies that brought negative consequences on miner's lives⁴⁵.

2.4. Other limits to this research

This thesis focuses on the role that NGOs played during the approval process of the EU Conflict Minerals Regulation. We have studied the importance of implementing strategies for NGOs and other civil society organisations to develop their legitimacy, in order to have access to the legal mechanisms that allow them to influence the legislator. For this reason, our empirical research was based on interviews with NGOs that have worked directly or indirectly on conflict minerals initiatives, particularly with the EU. Despite a great deal of research and synthesis of academic publications to write this thesis, we have made extensive reference to the positions that NGOs have taken. This has meant leaving out others organisations and associations, in particular those representing the interests of industry. The dominant reading, which guided the analysis of the political processes analysed, is therefore quite close to that presented by some NGOs.

Our primary objective in answering the research question was to understand and reconstruct the legitimisation strategies that NGOs use to make new norms accepted by the legislator. Our case studies include the approval process of the EU Conflict Minerals Regulation and other initiatives. The methodology developed has inevitably forced us to consider the major dynamics of the conflicts in the east of the DRC. However, in order to concentrate our efforts to answer the research question, we have been forced to simplify the analysis of certain dynamics and to exclude some actors. Taking as an example the reading of the main NGOs and the actors interviewed, we attributed the responsibility for the wars in DRC to the minerals. Evidently the reality is much more

⁴⁵ Cf. RADLEY B., CHASE S. *We Will Win Peace*, Concept 81, Trans Africa Media, 2015, retrieved from YouTube, accessed on 1/9/2017.

multifaceted. The DRC is a large country with a long and complex history. For reasons of expediency but also of material space we have had, for example, to bypass the history of Congolese civil society, which has taken important positions on conflict minerals. The analysis of local actors in the east of the DRC, such as armed groups, policy makers and economic actors was also left out. This does not mean that these actors did not play important roles in the continuation of armed conflicts in the region. We mention the importance of other countries in the region as well as some other fundamental issues related to governance; and enough historical elements to demonstrate that a total and complete analysis is clearly not possible. Other limitations to our analysis, which was based on the positions of NGOs, include the failure to reconstruct the strategies of local actors; the role of local and international governance, the relationship between local and international NGOs, the residual elements of the decolonisation process on humanitarian aid and development cooperation, etc.

The dominant reading of the events analysed is therefore strongly influenced by the positions of the NGOs. For this reason it is also important to highlight another limitation of this dissertation, which should be remembered throughout the reading. NGOs are very numerous in all countries of the world. They are sometimes federated with other similar organisations. However, there is no global union for this type of actors, a supranational entity that regulates their behaviour or controls their positions. Talking about NGOs is like talking about companies; they exist everywhere, they are private law bodies and they comply with the laws of the country in which they operate. They have different ways of financing themselves and consequently have very different objectives. Even in the case of the organisations analysed below, which worked on conflict minerals, we realised that they did not all pursue the same goals, nor did they propose the same solutions. Among other things, there are structural differences between them that make sure that the views of some powerful organisations prevail, without necessarily being the most legitimate, representative or those with the best projects, initiatives or proposals.

With the support of the scientific literature, we tried to summarise the different views and objectives of the organisations analysed in this study. We also explained how these organisations have often come to have a similar position and come together before the legislator to promote their proposals. This does not mean, however, that their basic objectives have been forgotten and that their synthesis is not affected in anyway. Their positions should not, therefore, be considered neutral or devoid of secondary interests.

Next section presents a description of the doctoral mobility, which allowed us to carry out the interviews in the DRC.

2.5. Doctoral mobility

The field research in the DRC took place between September and December 2017 in the cities of Bukavu and Goma. The doctoral mobility was facilitated thanks to the financial contribution of AUF⁴⁶, which partially covered the travel costs. The trip went generally well, without any major unforeseen or security problems, although the country is affected by several armed conflicts⁴⁷. We joined the team of the CEGEMI of UCB, a research centre led by Professor Paul-Robain Namegabe. The host University has been able to receive an international student and integrate it into the local team. Thanks to this integration we were able to: work with members of the research centre, who work jointly with researchers from the faculty of economics and the faculty of law of the University; share new knowledge and contribute to the theoretical debate on local issues with the CEGEMI researchers; access all the documentation available in the research centre, as well as the Faculty's library; facilitate our search for contact with key actors in order to collect the information we needed for doctoral research.

Among the major opportunities represented by the field research, which has allowed the growth of the quality of empirical research, we highlight the opportunity to directly observe the dynamics of post-conflict areas and the role played by the key international actors in these areas (EU, UNHCR, UNICEF, UN Peacekeeping Mission). In addition, field research was motivated by the massive presence in the region of NGOs working on the issue of natural resources. It must be emphasised, however, that the largest INGOs are not, or no longer, physically present in this field. In fact it is appropriate to point out that the most massive NGOs presence in this region was recorded in the period following the second Congo war, which officially ended in 2003. This had transformed some cities in eastern DRC, for example Goma, in "an attractive and regional 'zone of opportunity'"⁴⁸. In

⁴⁶ *Agence Universitaire de la Francophonie*. AUF brings together 944 universities, colleges, university networks and research centres in 116 countries. The agency aims to strengthen cooperation between French-speaking higher education institutions, with the aim to improving the quality of education and research.

Cf. www.auf.org

⁴⁷ The twenty-seventh edition of the *Conflict barometer* edited by the *Heidelberg Institute for International Conflict Research*, identifies 10 conflicts within the DRC. The most serious arrive at intensity 4, on a scale of 5. According to the results of the Conflict barometer, most of these conflicts are related to the resources and armed groups present in the country, as well as to bad relations with neighbouring countries, especially Uganda and Rwanda.

Cf. Heidelberg Institute for International Conflict Research, *Conflict Barometer 2018*, n°27, 2019, pp.56-60.

⁴⁸ BÜSCHER K., VLASSENROOT K. *Humanitarian presence and urban development: new opportunities and contrasts in Goma, DRC*, Disasters, 2010, p.S257.

addition to humanitarian interventions, some of these INGOs, for example Oxfam or Doctors Without Borders (MSF), also dealt with information production and lobbying. But with the passing of the years and the weakening of the funding by international community, many INGOs have finished the projects, closed their offices in this area or outsourced "part of their action programmes to local NGOs"⁴⁹.

In spite of that, the main result of the field experience was the meeting and interview of NGOs based in the two provinces of North and South Kivu, which however collaborate with the largest INGOs. These NGOs generally have small budgets but often conduct extensive researches and fieldworks. Thanks to several collaboration programs, they come into contact with the major INGOs that provide them with means in exchange for information. Large INGOs move on the ground to compare their datas or hypotheses with the information and knowledge of local NGOs. The NGOs we interviewed proved to be very helpful and immediately received us for the interview. The interviews were based on a fixed questionnaire that we use with all the organisations. We exchanged in depth: on the most important initiatives concerning conflict minerals; on how to address political pressure to local and international authorities; on the ability to convey information through NGOs networks. The analysis has mainly reconstructed the way in which local NGOs, who have more access to information in the field, work with the larger INGOs, which generally have more opportunities to influence the EU legislator. Finally, the interviews allowed us to obtain reliable information on the Kivu provinces. As a result, we have been able to obtain valuable data and better understand the importance of the mineral trade in the current international scenario. The major difficulties at the methodological level were related to the treatment of sensitive issues. Indeed, some actors in the field were afraid to assert a series of elements, for example, criticise the government, the military and the police by denouncing corruption or abuses. As a result, answers to questions may be partially biased. In conclusion, doctoral mobility has been a decisive tool for writing this thesis. The interviews will be reported in the chapters that follow, especially Chapter Three.

3. The main pillars of literature review

To conduct this research, before going to the field, it was necessary to analyse a vast literature. A summary of the documents analysed can be found below in this introductory chapter. The second part of the literature review moves slightly from international relations to the field of geology and

⁴⁹ *Ivi*, p.S261.

economics. This was essential to understand the usefulness of minerals to human activities, therefore to make the reader understand the strategic importance of minerals in IR. This analysis is intended for Chapter One. The third part of the literature review will be concentrated in Chapter Two and concerns NGOs.

Returning to this introduction, we underline that a huge work in the academic field has been done by many scholars on the relationship between natural resources and conflict. As far as our case study is concerned, the highest peak of production of this literature has followed the wars in the Great Lakes region since the nineties. Much has been written about this region of the world, not only by academics, but also by journalists and by organisations which have dedicated many studies to these issues. For this thesis, we have focused on the literature concerning especially mineral resources, in particular present in the east of the DRC. We then summarised, in order to contextualise the problem, the main steps of the conflicts related to the resources that have bloodied the Great Lakes region. It is in fact from these conflicts that the need to legislate has arisen. In this introduction we also mention the fact that the conflicts have subsided, but they have not totally stopped. This is also due to the fact that the demand for precious minerals does not stop, rather it is constantly growing. The main reason for this is the increase in global well-being and also the transition of capitalism towards the new green economy, theoretically to cope with climate change. Raw materials are fundamental to the world economy and they are responsible for maintaining high standard of living. Their supply is not always obvious, especially for some resources that are scarce, or that are in remote and hard-to-reach areas, or regions affected by war. The so-called 'conflict minerals' take this name because they come from areas where their extraction causes massive violations of human rights and contributes to the financing of armed groups that fuel conflicts. However the demand for these kinds of minerals continues to grow, as consumers around the world need products manufactured from their transformations, as we will explain in next chapters. Trade of these minerals is particularly thriving for the industry at the global level, as we will see in later chapters. These raw materials are of great economic importance to the world economy: they are rare, valuable and there is a high risk associated with their supply in some regions of the world. In addition they can provoke political, economic and social crises with consequences in several countries.

Many initiatives have consequently been undertaken to protect the market and trade. In general, these initiatives are aimed at: breaking the links between conflicts and resource exploitation; ensure the supply chain of MNCs; to adapt global competition to emerging countries that are often huge

consumers of these minerals. The mining sector is indeed a flagship product of contemporary capitalism: in addition to mobilising huge sums of money, it is strictly connected to the technological, electronic, health, military and communications sectors. The mining sector is also one of the first responsible for pollution and global warming. It is also the basis of the promised revolution of green capitalism, which is already underway and changing the lives of consumers around the world.

Next paragraph is dedicated to analyse the literature that preceded the initiatives and raised the problem of resources related to conflicts.

3.1. Natural resources and armed conflicts

It is useful to point out once again that this thesis does not deal with the issue of conflict minerals but rather with the legitimization strategies that NGOs have used for influencing the EU Conflict Minerals Regulation. Nevertheless, it is appropriate to open a parenthesis to explain the topic a little, which has been widely discussed, academically studied and is relatively well-known by the public. Even if this topic has been widely studied in the academic field, we would like to summarise it briefly, where relevant to our research subject. This is a plenty and complex topic, for which we have consulted many scholars during this research. Among the most important are those of Collier, Vlassenroot, Ansoms, Le Billon, Geenen, Claessens, Custers, Bucyalimwe Mararo, Marivoet, Sakata, Parqué, Rostagno, Auty, Ross, Van damme, Matthysen, Montejano, De Haan, Buraye, Byemba, Mukasa, Marysse, Tshimanga, Kamulanda, Mukotanyi, Weyns, Hoex, Cook, Levin, Martin, Taylor, De Soysa, Leite, Weidmann, Ross, Hoeffler, Sachs, Warner, etc.

Given the vast academic production on the subject, we will only limit ourselves to a brief summary. This is because it is important to understand the context within which the law was discussed and then approved. All these studies begin by highlighting the development of some countries through the revenue of their natural resources. In theory, the exploitation of natural resources should lead to wealth and well-being in any country. Paradoxically, time and time again, the opposite has been demonstrated: "resource-rich countries have seen their lives devastated by the misuse of resource revenues; (...) compared to less well-endowed countries, resource-rich countries have been on average poorer and less competently governed. If not all resource-dependent countries follow this pattern, many have been governed by authoritarian and corrupt regimes, leaving the vast majority of

their population under harsh conditions of poverty or blatant inequality"⁵⁰.

Many authors have written about the 'resource curse'⁵¹ by which countries with abundant natural resources (both fossil fuels and minerals) tend to have: "poor economic growth and exposure to shock"; "low standards of living, poverty and inequalities"; "high levels of corruption"; "authoritarianism and poor governance"; "risk of civil war"⁵². The 'resource curse' characterises poor countries, which become resource dependent, falling into the so-called natural resource trap⁵³. This situation can indeed happen for many reasons, including: mismanagement of resources and lack of good governance; corruption in institutions; the volatility of revenue from natural resources (of which prices are often oscillating); the decline of the competitiveness of other sectors, often crushed by the income from the export of resources. There are serious effects that may result from this situation. Normally, the first consequence involves the collapse of economic growth. Then a government collapse may occur. Lastly, in the most serious cases, violence and conflicts of varying intensity and duration can be witnessed.

Le Billon highlights the various causes of conflict stemming from resource exploitation and involving local populations: the loss of the right to use land, for example, because people are forced by resource exploiters to leave, or must leave due to the destruction of the surrounding environment; lack of opportunities and inability to participate in resource management; impossibility to use resources; worsening of their social status in favour of other groups; rapid population growth in resource exploitation areas, which can thus blow up services and economic opportunities to the originally resident population⁵⁴. It is not a coincidence that this type of studies on the correlation between natural resources and conflicts began in the 1990s. In fact, it was the end of the Cold War that changed the world equilibrium. As a result, resource management has diversified. In addition, borders; alliances, and influence zones have undergone transformations. In some cases they have given rise to conflicts. In summary, a resource-rich environment can become dependent on the exploitation of its resources, creating political and economic instability and, in this way, it is more likely to cause rebellions, conflict and even war.

A critical point to remember is the relationship between resources and the type of conflict that may

⁵⁰ LE BILLON P. *Fuelling war: natural resources and armed conflicts*, No. 373. Routledge, 2013, p.7.

⁵¹ The expression 'the resource curse' was used for the first time in 1993; AUTY R. *Sustaining development in mineral economies: the resource curse thesis*, Routledge, 2002.

⁵² LE BILLON P. 2013, pp.11-12.

⁵³ COLLIER P. 2007.

⁵⁴ LE BILLON P. 2013, p.25.

occur in a particular environment. Obviously this depends on many factors, above all the type of resource and the accessibility. As in the case of the 'resource curse', even here there are exceptions to the rules but it is generally observable that resources can influence and determine the type of conflict. In Le Billon's analysis, we learn that four types of armed conflict can be generated from resources: coup d'état; warlordism, secession as well as peasant or mass rebellion. Foreign intervention could be an addition to one of the circumstances listed above⁵⁵. Another important variable to consider is that the duration of the conflict may increase, based on the length of time that natural resources remain present in a given territory. In fact, if belligerents control the revenue generated from resources, it allows them to prolong the hostilities. Moreover, this situation also allows greater cohesion of the armed group and can undoubtedly change the fate of the conflict. Illegal armed groups could also divert certain resources to certain actors, claiming some of their earnings. In addition, the prolongation of the conflict could attract other groups to participate in order to rescue the resources. In this way the situation is further complicated and "driven by financial rewards rather than political goals, with a growing number of belligerents motivated by economic self-interest"⁵⁶. In this way the areas of economic interest become the centre of confrontations. Peace agreements are often discussed indefinitely, presumably as a way to preserve the uncontrolled status of resource exploitation. Peace agreements might restore a certain degree of legality, which might in turn discourage some groups to intervene due to the lack of associated profits. The strategies of some armed groups could include a perpetuation of the conflict, for example by staying along international borders or areas of great insecurity.

However, in IR there are many actions that have been designed to get out of this kind of situation and to prevent conflicts. First of all there is diplomatic action which is not the focal point of this thesis. Some expect to act on resources, for example by distributing resources more efficiently and equally or by sanctioning the countries involved in the conflict by providing an embargo. Even massive mobilisation of humanitarian aid could alleviate a conflict or oversee trade in resources through IOs.

The focus of this thesis is to explore the dynamics surrounding the ways in which pressure can be applied on institutions or governments or corporations in order to spur corporate responsibility. This is a job that NGOs and other CSOs have historically accomplished. NGOs are able to organise legal actions, denigration or boycott campaigns towards governments and MNCs⁵⁷. Putting pressure on

⁵⁵ Ivi, pp.37-43.

⁵⁶ Ivi, p.44.

⁵⁷ MERCIER-SUISSA C. *Delocalizzazione e Corporate Social Responsibility*, Business and Management Sciences

companies means to acknowledge that they are actors responsible for what is happening in a context of prolonged conflict surrounding the abundance of natural resources. Applying pressure on companies also means avoiding embargo solutions that block business which can be vital to the survival of the affected populations. Putting pressure on corporate responsibility is considered important in order to avoid possible business degeneration such as: contributing to increased corruption; directly or indirectly financing unrepresentative or authoritarian governments or rebel groups; fostering an increase in inequalities; competing with abuses and violations of human rights, etc,⁵⁸.

To conclude, NGOs can put pressure on companies and MNCs to increase responsibility by lobbying and advocating in various ways. The actions of the NGOs can be directed on the companies themselves, on consumers, on governments, on institutions or on civil society.

3.2. The conflicts triggered by resources

Some natural resources have been responsible for triggering and persisting conflicts in different countries. The correlation between the presence of resources in the subsoil, the onset and the persistence of armed conflict has been abundantly demonstrated by numerous studies. Among the best-known, are the research teams of the WB, led by Paul Collier. Their studies have explained how civil war can explode in low-income but resource-rich countries⁵⁹. In addition, these countries may find themselves in a trap: I) if their economic system is based solely on the exploitation of these resources; II) if bad governance is established in the country; III) if the country is landlocked; IV) if relations with neighbouring countries are not positive⁶⁰. Further research explains other mechanisms that link armed conflict and resources. We explore, for example, the possibility of access by armed groups to raw materials is potentially the source of funding for their activities. This is the typical case for the mines in eastern DRC but we also might remember the control of the oil wells by Daesh in Iraq or the narco-trafficking that financed the FARC war in Colombia. Although it is very difficult to understand all the parameters that contribute to the triggering of conflicts, it was observed that the abundance of natural resources was the major factor in at least 17 conflicts between 1990 and 2002⁶¹. It is astonishing to learn that states with oil resources, strategic minerals,

International Quarterly Review, Economia Aziendale Online, 2014, p.241.

⁵⁸ LE BILLON P. 2013, pp.69-70.

⁵⁹ COLLIER P., HOEFFLER A. *On economic causes of civil war*, Oxford economic papers, 1998, pp.563-573.

⁶⁰ COLLIER P. 2007, pp.17-78.

⁶¹ CRAMER B. *L'Afrique des minerais stratégique. Du détournement des richesses à la culture de la guerre*, Les Rapports du Grip, Bruxelles, 2018, p.8.

precious stones, or other precious resources, such as wood or copper, are four times more likely to pay the price of an armed conflict, than a state that lacks it. Worse still, the armed conflicts most likely to recur are those, precisely, that involve natural resources⁶².

Again, widespread inequalities in the distribution of resources can lead to multiple claims and even when these resources are concentrated in a particular area, they can encourage or even trigger secessionist attempts. This was one of the major reasons for the secession of South Sudan. It is in fact recognised that natural resources exacerbate both regional conflicts and international: for example the Second Congo War, from 1998 to 2002, involved nine African countries and nearly two dozen armed groups⁶³. In addition, if a state is dependent on the export of certain resources but neglects other sectors of its economic system, it can easily expose itself to significant financial disruption. Finally, when a state is exhausted by internal conflicts, it is exposed to risks of direct and indirect interference⁶⁴. For decades the trade in natural resources, gems and strategic minerals has played a central role in conflict financing. Trade in resources has therefore been responsible for financing wars and massive human rights violations. We take as an example in our study the DRC and especially the situation observed in the east of the country, from the late nineties onwards.

In the next paragraph we will briefly summarise the events that characterised the war in the DRC. Later, in the Chapter Three, we will focus on the emergence of NGOs in this context. In addition, thanks to interviews carried out, we can begin to understand how the war for resources has legitimised the work of NGOs in the east of the DRC.

3.3. The conflict in the DRC

The wars in the Great Lakes region of Africa have been particularly violent and prolonged. They have captured the attention of intellectuals; the media, members of international civil society and a huge number of NGOs, who have published a great deal of research around the issue of conflict minerals. The wars in the DRC (1996-1997 and 1998-2003) involved nine African nations and at least twenty-five armed groups. The first war marked the end of Mobutu's authoritarian regime and was led by Laurent Désiré Kabila's Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL) and supported militarily by Angola, Rwanda and Uganda. The second war began

⁶² *Ivi*, p.10.

⁶³ *Ivi*, p.11.

⁶⁴ ROUSSEAU E. *Le Processus de Kimberley et la lutte contre le commerce des «diamants de sang»*, Courrier hebdomadaire du CRISP, 2017, p.8.

following the expulsion of the old Rwandan and Ugandan allies by the Kabila government, which was supported by Angola, Chad, Namibia, Sudan and Zimbabwe. Ugandan and Rwandan belligerents, which had occupied Congolese territory after the first war, were supported by Uganda, Rwanda and Burundi and by several rebel groups⁶⁵.

The peace agreements took place in 2002 after the assassination of President Kabila, replaced by his son Joseph Kabila. The agreements included the withdrawal of Rwandan and Ugandan occupation forces, the inclusion of several paramilitary groups in the DRC's armed forces and the formation of a national unity government⁶⁶. However, the huge wealth of the subsoil in eastern DRC is preventing the success of peace agreements and the conflict continues, albeit with less intensity. The persistence of the conflict is explained by the possibility for the armed groups, active in this region, to finance their activities through the control of resources, especially mining, particularly in the artisanal sector, but also that of wood. During this period, in the early 2000s, the international press began to explain the relationship between conflict and resources in eastern DRC. It is also thanks to the mass media that the problem begins to be known by a certain part of world public opinion⁶⁷. Moreover the copious academic debates were followed by numerous publications and outreach activities by European and North American NGOs, especially Global Witness, Partnership Africa Canada, Human Rights Watch, Amnesty International and the eastern Congo Initiative. In these reports the NGOs expressed "their worries and indignation over the fact that the international community failed to prevent key players in the Congolese conflict from enriching themselves and financing their war efforts through the illegal sale of minerals and timber on the international market"⁶⁸. These reports went further and support "the personal involvement in the looting operations of several prominent politicians and heads of state of neighbouring countries"⁶⁹, namely Rwanda, Uganda and Zimbabwe⁷⁰. In order to be able to defend such heavy claims, these NGOs cited the six documents published by the UN expert groups between 2001 and 2003. The mandate

⁶⁵ About the two Congo wars cf.:

REYNTJENS F. *The Great African War. Congo and Regional Geopolitics, 1996-2006*, Cambridge, 2009;

PRUNIER G. *Africa's World War. Congo, the Rwandan Genocide and the Making of a Continental Catastrophe*, Oxford, New York, 2009;

REYNTJENS F. *La grande guerre africaine : Instabilité, violence et déclin de l'Etat en Afrique Centrale (1996-2006)*, Paris, Le bruit du monde, 2012;

UN ECONOMIC COMMISSION FOR AFRICA, *Conflicts in the Democratic Republic of Congo: Causes, Impact and Implications for the Great Lakes Region*, September 2015.

⁶⁶ Peace agreements are available on UN database, *United Nations Peacemaker*: www.peacemaker.un.org.

⁶⁷ VESPERINI H. *Congo's coltan rush*, BBC World News Africa, Goma, DRC, 1/8/2001; www.news.bbc.co.uk.

⁶⁸ CUYVALIER J. G. R., VAN BOCKSTAEL S., VLASSENROOT K., WAKENGE C. I. *Analyzing the impact of the Dodd-Frank Act on Congolese livelihoods*. SSRN, 2014, p.3.

⁶⁹ *Ibidem*.

⁷⁰ UNSC *Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, S/2002/1146, 16/10/2002.

of the expert group was to collect information on the illegal exploitation of natural resources, on violations of sovereignty and to investigate the links between the exploitation of natural resources and the continuation of conflict⁷¹.

In keeping with the reports, the private sector active in the exploitation of minerals played a vital role in the continuation of the war. Several MNCs have directly and indirectly financed the purchase of weapons by rebel groups in exchange for minerals. It should be noted that the UN group of experts has considered several products, not only natural resources and minerals (including minerals not mined in the DRC) which could have played an important role in financing war,. According to the UN report, three categories of products were considered: I) mineral resources, mainly coltan, diamonds, gold and cassiterite; II) agriculture, forestry and wildlife, including wood, coffee and ivory; III) financial products, especially taxes⁷². The group of experts considered the active mineral trading companies in the region as "the driving force of the conflict in the DRC" which has enriched elites formed by businessmen and senior officers⁷³. The annexes to the UN reports include the names of several companies that have supported the conflict in the DRC. Several of these companies are based in the EU, including Belgium, Germany and the Netherlands.

In conclusion, the UN has been the pioneering IO that has documented in detail the relationship between conflict and resources. Their reports at the beginning of the millennium represent an important turning point. Armed groups, businesses, countries, political figures and entrepreneurs have been seen as protagonists and leaders of economic and humanitarian disaster, in order to make money and profit from resources. This has triggered a series of reactions from some actors in the international community at various locations and various initiatives have been launched to attempt to control the trade of natural resources from the region. These initiatives were initially taken individually by small actors or small groups, before they took a global turn, involving large IOs and governments. We will explore these initiatives in Chapter Three. The actors, especially the NGOs, who have put pressure to encourage these initiatives, will be introduced in Chapter Two. The interviews to the most engaged NGOs will be exploited in Chapter Three.

⁷¹ VUYELWA K. *The Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo*, Lauterpacht Centre for International Law, University of Cambridge, 2008, pp.1-2.

⁷² UNSC *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, S/2001/357, 12/6/2001, para.13.

⁷³ *Ivi*, para.215.

3.4. Conflict minerals initiatives

African conflicts linked to natural resources have had considerable visibility, both in the academic field and in civil society. When we write about "considerable visibility" we are referring to specific circles or groups in society that have dealt with the issue. Conflict minerals cannot be considered a subject that is well-known to the general public. However, it must be said that, as supported by the bibliography of this thesis, a lot has been written in the academic field about minerals and conflicts. On the other hand, as analysed in this thesis, throughout civil society, the visibility of the topic has been championed precisely by the organisations that have, in various ways, mobilised part of the public opinion on the issue. Again, as we will see later in this thesis, only a small minority of civil society organisations have actually worked on the subject. Others have only indirectly followed the issue. For example, we know that those who work on human rights, on conflicts, on DRC, on inequality, poverty and other related topics, have come into contact with the notion of conflict minerals. And in this sense the NGOs have worked as a sounding board, trying to raise awareness of the problems. However, we reiterate that these topics remain largely unknown to the general public. Thanks to the work done by a niche of organisations working in certain countries, the topic has gradually become more well-known. For example, the paradox of the abundance of resources in a land torn by conflict has scandalised part of the public opinion of some nations and created a momentum of mobilisation and awareness campaigns that return to the pages of newspapers. This was followed by the political initiatives and norms which have tried to bring order to the chaotic world of the mineral trade.

The aim of this thesis is certainly not to analyse every initiative but rather to focus on the legitimisation strategies of NGOs to better understand how they try to influence the legislator with the acceptance of their positions. In particular we will focus on the political pressure of the NGOs working on the EU regulation. However, it is important to note that there have been other initiatives before the EU regulation. We will analyse some of them, for example: the ICGLR; the EITI; the OECD Due Diligence guidance for responsible business; the Section 1502 of the Dodd-Frank Act; the Kabila's minerals export ban. All of these initiatives include a mineral traceability system, which account for the exact locations where minerals originate.

The first law, the one most known globally, was the section 1502 of the US government's Dodd-Frank Wall Street Reform and Consumer Protection Act, a federal law of 2010. This law introduced the concept of 'conflict minerals', defined as gold, columbite tantalite, cassiterite, wolframite, as

well as their coltan, tin and tungsten derivatives. These minerals have in common the fact that they represent critical resources in the industrial production of cars, aircraft, medical equipment and electronics in general. "The geopolitics of natural resources has long been a strategic concern for both exporting and importing states"⁷⁴, which is one of the main reasons why first the US, then the EU and China later, have taken the initiative to legislate. Another cardinal reason is to ensure the supply chain in a strategic perspective aimed at improving the governance of natural resources. These legislations are conceived with the aim to prevent groups that play a role in violent conflicts from establishing themselves, as well as to discourage the exploitation and violation of human rights caused by the extraction of these materials. 3TG are seen as fuelling the conflict in the DRC, giving credits and funds to different armed groups, which are controlling the mines. This situation has enriched many warlords and has provoked serious violations of human rights, extreme exploitation of workers and insecurity in a large area in the east of the DRC. The violence and the resulting humanitarian crisis created by this situation has provoked millions of refugees, Internally Displaced Persons (IDPs) and deaths.

We therefore go on to understand in what context these initiatives were born. In particular, we will also highlight how resource-related conflicts have an impact on the environment. And above all we focused on the region of study where this thesis is centred on, the east of the DRC. Furthermore, we will underline how the new green economy in turn needs a huge amount of natural resources, especially minerals.

4. Context of emergence and evolution of the problem

The global competition for the grabbing of natural resources all over the planet is today a determining factor of geopolitical balances. Assuming that environmental problems play a decisive role in the emergence of conflicts⁷⁵, we can see the emergence of 'green geopolitics'; its awakening is observed because for several decades, environmental damage of all types, including resource grabbing, has been associated with conflicts⁷⁶. This phenomenon is due to the intersection of several factors, principally the ecological impact of armed conflict, which the UN highlights every 6 November with the International Day for the Prevention of Exploitation of the environment in times of war and armed conflict⁷⁷. This event raises awareness of the point of view that the environment

⁷⁴ LE BILLON P. 2013, p.81.

⁷⁵ CRAMER B. 2018, p.4.

⁷⁶ *Ibidem*.

⁷⁷ *Ivi*, p.6.

becomes the victim of an almost incestuous relationship between military institutions and industrial actors to achieve their ends⁷⁸. Secondly, environmental crises, including the climate emergency and the social emergency, which often overlap, are triggers for potential conflicts, in the present and for the future. For example, environmental degradation and resource depletion lead to expanding socio-economic tensions and increase the risk of resorting to military force⁷⁹. Other phenomena that contribute to the awakening of a green geopolitics are: I) 'collateral damage' which often affects 'civilians who espouse environmental causes' and become victims, especially journalists and aid workers; II) the capacity of forces hostile to any preservation of the equilibrium of the ecosystems to consider that the capacity to degrade our environments constitutes in itself a weapon of war; that there is a tactical or strategic interest in the environment being manipulated; III) to emerge from a culture of militarisation alongside the culture of armament⁸⁰.

In an economic system based on consumer capitalism, the exploitation of natural resources is therefore a matter of primary importance. This exploitation continues to increase, to the point that humanity consumes about fifty percent more natural resources than thirty years ago⁸¹. This is due to several factors, of which a considerable one is the extraordinary growth of the population and the need to improve the human well-being for a rising number of people. In practice, when it comes to access to energy; infrastructure and food for growing masses of people at the global level, needs can be met but will have an unprecedented impact, especially on the biosphere. The growth in global demand for natural resources is giving rise to many problems, including climate change or increased conflicts. In the context of resource exploitation, the question of ores and metals is one of the major challenges of the 21st century⁸². The competition for mineral resources represents a great danger for the whole planet because it "creates global threats on two time scales: imminent risks of armed conflict and longer-term risks of global resource depletion"⁸³.

5. Plan of the dissertation

The first part of this research, Chapters One and Two, will deal with the theory. This will allow us to focus on the research questions and later, the development of methods to find the answers. In the first part we will explain the role of the theory within this research, based on qualitative interviews.

⁷⁸ *Ibidem*.

⁷⁹ *Ivi*, pp.6-7.

⁸⁰ *Ibidem*.

⁸¹ *Ivi*, p.30.

⁸² *Ibidem*.

⁸³ *Ibidem*.

Some of the origins and the need for the EU to legislate, will be further developed in Chapter One. This chapter will concern the issue of mineral resources. This part considers a technical-economic part, which explains the practical use of the minerals included by the EU regulation. The study presented in Chapter One, represents the starting point of the legislative initiatives to fight against conflict minerals, on which NGOs built their discourse. In fact, on the basis of the economic and political issues related to minerals, NGOs have made their views known to society and built their counter-proposals with the legislator. This chapter also allows us to understand the importance of the issues related to minerals on a global level, which is why both legislators and NGOs have activated themselves and have dedicated considerable attention. The role of mineral resources in the conflict in the DRC will be introduced.

Chapter Two will consider all the aspects of the NGO actor: the definition, the origins as well as the growth of visibility and power. The legal devices created to give voice to NGOs in international institutions will also be identified. The second track followed for the literature review concerns the concept of legitimization.

Later we will need to understand, and it is one of the main objectives of this thesis, how NGOs reconstruct their discourse. This point will be developed in Chapter Three. It will be explained, how international NGOs collaborate with local NGOs to have a greater power of influence, also thanks to reliable information and well-researched political positions. It will be analysed: how international NGOs networks are created; how these allow NGOs to work together in order to increase their credibility and power, particularly towards institutions. The effects of the work of these networks on the EU Conflict Minerals Regulation will be largely discussed. We will summarise the initiatives that have led to the EU regulation, the law approval process and the influences of NGOs. After isolating some specific criteria from the literature, we will eventually apply them to the NGOs of our case study. In this final analysis, we will draw conclusions that will allow us to understand how legitimization strategies of NGOs can influence a new legal paradigm.

Chapter outline

This first introductory chapter enables us to show all the fundamental elements that will be studied by this thesis. It is an introductory summary and all the central elements anticipated in this chapter will be developed in greater detail. We have anticipated the literature which represents the starting point of our research. We have studied and selected the most appropriate documents to understand

first some key principles, specifically the relationship between natural resources and conflicts; NGOs and their activities especially in relation to the DRC, a place that has been identified as ideal for our case study. After an initial analysis of this literature, we understood that some topics had not been addressed in depth. Above all, lobbying by NGOs has only been partially studied. Some strategies, partnerships and mechanisms for building the discourse have not been highlighted sufficiently. Particularly, it is difficult to even refer to any practical explanations that clarify how NGOs partnerships build their positions to influence the law-making process. This is why we have developed a methodology based on empirical evidence and qualitative interviews. These interviews will help us understand the case study, which is built on the lobbying of NGOs on the EU regulation on conflict minerals.

Chapter 1: The economic and political issues related to the supply of minerals.

"With the global human population expected to reach over nine billion by 2050, urbanisation, access to energy, infrastructure development, and poverty reduction will result in an unprecedented strain on our planet's natural resources and environment"⁸⁴.

⁸⁴ WORLD BANK GROUP *The Growing Role of Minerals and Metals for a Low Carbon Future*, 2017, p.X.

Introduction

This chapter, we admit, is somewhat anomalous for a thesis in IR. In fact, before writing it, a literature review was needed that was specifically focused on geological issues. We started our research with the suggestions of Mr Johan Yans, a geologist with whom we found the opportunity and the importance of deepening some aspects of geology. In fact, the issue of conflict minerals has a transversal character and must be addressed considering not only the political but also the economic aspects and the social impacts deriving from the use of minerals.

Indeed the case study of this thesis concerns the impact of NGOs actions on the EU Conflict Minerals Regulation. This law concerns customs: it wants to regulate the imports of some minerals with a traceability system. We therefore thought it useful to understand the importance of these minerals for the EU single market. After an initial analysis of articles and documents, we immediately realised the strategic importance of these kinds of natural resources. In fact, these minerals, of a metallic nature, are indispensable for many MNCs and therefore for the EU economy. To reaffirm why they are so important, we have first tried to understand their characteristics, their use, their reference market and the problems related to their extraction. To have a more complete view for this thesis, we thought it important to reflect on the key role of some strategic minerals for the EU.

Before building their argument and bringing their position to the legislator, NGOs have carried out a lot of research on exactly these topics that we present in this chapter. NGO study work was important in assessing the social, political and environmental impacts of mineral extraction⁸⁵. The exploitation of communities living in mining areas has been highlighted⁸⁶; failure to respect human rights in the natural resources exploitation⁸⁷ and numerous other issues related to the exploitation of minerals⁸⁸. Much of this research was then disseminated by NGOs to civil society with painstaking advocacy work. Some of them were, among other things, financed by the EU itself⁸⁹. This work increased the legitimacy of NGOs as it made it possible to raise awareness of previously unknown

⁸⁵ Cf. GLOBAL WITNESS *Une corruption profonde. Fraude, abus et exploitation dans les mines de cuivre et de cobalt du Katanga*, Juillet 2006.

⁸⁶ Cf. MERCIER B. *RD Congo. Ressources Naturelles et violence. Le cas des FDLR*, Les Rapports du GRIP, 2009.

⁸⁷ Cf. COMMISSION JUSTICE ET PAIX *Les violations des Droits de l'Homme liées à l'exploitation des ressources naturelles en République Démocratique du Congo*, Mars 2010.

⁸⁸ Cf. ENOUGH PROJECT *Getting to Conflict-Free. Assessing Corporate Action on Conflict Minerals*, December 2010.

⁸⁹ Cf. INTERNATIONAL ALERT *Etude sur le rôle de l'exploitation des ressources naturelles dans l'alimentation et la perpétuation des crises de l'est de la RDC*, Octobre 2009.

issues. The pressure to take legislative measures also started from these works. That's why we want to highlight the strategic importance that these minerals have: the work of NGOs to try to influence the initiatives on minerals, starts from their knowledge.

This chapter explains why the EU single market demands and consumes considerable quantities of some metals. In fact, these minerals are an integral part in many economic sectors, for example for the automotive, technological, pharmaceutical, military and aerospace industries. This chapter explains how the demand for some metals is increasing today more than ever. This happens also because it was decided to switch to the green economy, to consume less fossil fuels and to try to contain climate change. For this step large quantities of resources are needed, which allow production of electric cars, photovoltaic panels, smart phones, wind turbines, etc. These new materials are flanked by more traditional technological instruments which, however, require important quantities of precious metals. How to cope with this increasing demand? The EU thought it better to make specific regulation in order to ensure the constant supply of specific minerals, known as the 3TG minerals: tungsten, tantalum, tin and gold. In addition, these minerals have caused instability and were responsible of protracted conflicts, among which the most serious were in the African Great Lakes region. For this reason too, the EU wanted to intervene, with external action that could improve the governance of some third countries.

The stability of some areas of the world is also in the interest of NGOs: some of them work in these regions of conflict, to which many problems derive from the unregulated extraction of natural resources. This is also a major reason why NGOs wanted to express their reasons before the proposed regulation on conflict minerals was approved.

For the sake of clarity, in the second part of this chapter we will deal with the origins of conflict and the exploitation of natural resources, especially minerals, in eastern DRC. These arguments have been highlighted as well by the actors we have met and their experience on the field. The goal is not to make an historical reconstruction of the conflict, but to underline some salient events that highlight the role of minerals in the region. In fact, this issue has been significantly studied by NGOs. They played an important role and provided useful information initially to raise awareness of the link between conflict and resources at a global level. Secondly, their approach has served to start the initiatives on blood minerals, which have also led the EU to act to stem the phenomenon. It is important to highlight some characteristics of the conflict, since it is in this context that NGOs have started to build discursive strategies to influence a norm. Furthermore, during the conflict,

some NGOs made themselves well-known while others carried out specific actions that increased their legitimacy. In particular, this has happened thanks to the positions they have taken, the studies carried out and the ties they have established with different actors to face the problem.

1.1. The role of raw materials for human beings

The role of raw materials is crucial in modern everyday life. Before entering the heart of the argument, it is important to clarify some concepts. First, this thesis covers non-energy raw materials or rather metallic, industrial and construction minerals⁹⁰. It means that all energetic raw materials, like fossil fuels, are not included in this study. We should also examine closely the definition of 'ore', as we will be perusing the literature concerning the economic geology we come across: when we talk about 'ore' we refer to "metal-bearing rocks and mineral mixtures from which metals or metallic compounds can be extracted by technical means and with economic profit"⁹¹. The same reflection about 'ore' should also be made for other raw materials and not just metals (for example: sand, clay, dolomite, limestone, etc.). It is important to note that only part of the draw is relegated to metals. There are many other non-metallic mineral mines, where extractions concern, for example, sand, coal, gas, oil, etc. In our case, we will use the term ore when referring to specific mineral, namely iron ore.

Raw materials represent the beginning of life for millions of objects that we are in touch with everyday. They are everywhere around us and take many different forms. They represent the basis on which our modern society was founded and through which it continues to live and prosper. We absolutely need them in our society. Since the Bronze and Iron ages human civilisation has been characterised by the use and exploitation of raw materials. Moreover, the global demand for minerals finds as well its origins right in Bronze and Iron ages. But we must wait for the industrial revolution for consumption to explode and begin the sustained growth that we know today. In the 21st century, the demand for raw material reflects the growth in global economic productivity and

⁹⁰ As TIESS clarifies "Industrial minerals are solid raw materials, which are not used for the extraction of metals and usually are monomineralic, such as talc, mica, or magnesite. These are used because of certain chemical and/or physical properties for special applications. Construction minerals are raw materials in the construction industry, which occur as rocks in the geological sense and often are mineral mixtures (e.g. sand and gravel, clay, granite). Industrial minerals and construction raw materials along with inorganic salts belong to the group of non-metallic raw materials. These can be used in for a variety of purposes, requirements concerning exploration of deposits, processing, refinement and market research being particularly high. In contrast to the evaluation of ore deposits, it is usually necessary to test processing at semi-industrial standard in order to prove that products will meet all customer's requirements".

TIESS G. 2011, pp.1-2.

⁹¹ *Ivi*, p.1.

the growth of the world population, which have reached unprecedented levels⁹². Throughout history, human beings have always researched, explored, discovered and produced materials from raw materials for survival, development and well-being purposes.

Research into raw materials has always been a concern for human beings. Humans have always conceived and learned techniques for working minerals and creating new products. It is for this reason that to distinguish various historical periods we talk about: the Stone Age (Palaeolithic-Neolithic), copper (Chalcolithic), bronze, iron (Siderolithic). Today we find ourselves in the age of fossil fuels, whose kings are arguably the coal, gas and oil. We are, however, moving into a new era. Once again the minerals will be at the centre of the transition. Through the development of renewable energy, we are moving towards the era of electron and low tech⁹³. This does not mean that contemporary societies will totally abandon fossil fuels. They will use other techniques and other minerals. In any case, renewable energies require numerous raw materials of geological origin⁹⁴. We will come back to this point later in this thesis.

Today we read, hear and learn that natural resources are limited and that they will surely run out. Depending on which materials are involved, we talk about an expected end to their extraction. We cannot be aware of the exact time when resources will end, nor can we say that they are infinite. But that the current availability of resources is calculated and communicated by MNCs operating in the sector, or government agencies. Sometimes to keep the highest price in international markets, these MNCs prefer to declare scarce availability of materials in their possession. In this way the supply remains sufficiently low as a way to keep the prices stable acting in accordance to the benefits of these very same MNCs and for the markets.

Another consideration is that raw materials are not distributed regularly, both in geologic time and in space. The place and time in which they are extracted and wrought, depend on many different patterns and socio-economic circumstances. Actually, geologists make a distinction between

⁹² Cf. UN *La population mondiale devrait atteindre 9,8 milliards en 2050 et 11,2 milliards en 2100, selon l'ONU*, Centre d'actualités de l'ONU, 21/06/2017.

Other facts about world population growth and methodology:

UN DESA, Population division; www.esa.un.org/unpd/wpp; accessed on 15/7/2018.

Various sources confirm the growth of world demand for raw materials. These include:

BIHOUIX P., DE GUILLEBON B. *Quel futur pour les métaux*. EDP Sciences, Paris, 2010;

EUROSTAT *Environmental Data Centre on Natural Resources*; www.ec.europa.eu/eurostat; accessed on 15/07/2018;

USGS *International Minerals Statistics and Information*; www.minerals.usgs.gov; accessed on 15/07/2018.

⁹³ BIHOUIX P. *L'Âge des low tech. Vers une civilisation techniquement soutenable: Vers une civilisation techniquement soutenable*, Le Seuil, 2014.

⁹⁴ YANS J. *Quel juste prix pour notre sous-sol?*, La Libre Entreprise, 25/11/2017.

reserves and resources. Scientists understand 'reserves' in "the amount of metal proven to exist and to be economic for mining at present" and usually "predicting imminent shortages". In other words "reserves are defined as that part of the reserve base which could be economically attractive or produced at the time of determination"⁹⁵. Different is the meaning of resources: this is intended as "the amount that may be accessible in the upper few kilometres of the crust" and is "far larger"⁹⁶. Other definitions state that resources are "a concentration of naturally occurring solid, liquid or gaseous material in or on the Earth's crust in such form and amount that economic extraction of a commodity from the concentration is currently or potentially feasible"⁹⁷.

Since at least the beginning of the 20th century, global production and use of minerals has grown significantly; this is due to industrialisation and economic growth, more accessible and sophisticated technologies, and then to a significant reduction in raw material costs⁹⁸. Due to an increment in production, the price of many metals has decreased. However, the global demand has consistently increased since industrialisation, due to the incessant discovery of new uses for minerals. Also lower-grade ore continue to be exploited economically. So this shows that there are market requirements that make a material more or less available at a given time. However, this is sometimes disconnected by real presence of natural resources in the subsoil.

As mentioned above, minerals are an essential part of everyday life in modern society. Their exploitation occupies a large part of the global economy. We find minerals in the products all around us, from laptops, to appliances, vehicles, machinery and all high-tech systems. They are also employed in medicine and in agriculture so their use is directly connected with our health and our general wellness. Although in rich and most developed economies the per capita consumption has stabilised, "global demand will continue to rise, fuelled by the growing needs in developing countries and changing technologies"⁹⁹.

Also if recent recycling practices have played an important role in stabilising demand in rich economies, hundred percent recovery of minerals is practically impossible. This is because a variable part is lost during processing and another part is lost during the recycling phase. Another variable part of minerals decompose during use while other parts corrode.

⁹⁵ WORLD BANK GROUP 2017, p.28.

⁹⁶ ARNDT T., FONTBOTE' L., HEDENQUIST J.W., KESLER S. E., THOMPSON J.F.H., WOOD D.G. *Future Global Mineral Resources*, Geochemical Perspectives. 6, 2017, p.1.

⁹⁷ WORLD BANK GROUP 2017, p.28.

⁹⁸ KRAUSMANN F. et al. *Growth in global materials use, GDP and population during the 20th century*, Ecological Economics, 2009, 68.10: 2696-2705.

⁹⁹ ARNDT T., FONTBOTE' L., HEDENQUIST J.W., KESLER S. E., THOMPSON J.F.H., WOOD D.G. 2017, p.3.

Certainly the use of certain minerals can vary over time, even by a substantial amount. For example, the use of mercury has decreased because it is toxic. In this historical period, the use of coal and petroleum is diminishing, due to special laws requirements, since it is highly polluting and responsible for the growth levels of carbon dioxide. In many other metals and minerals products, "from antimony to zinc, however, consumption and hence production will continue to increase"¹⁰⁰.

Today we can claim that the mineral and metal markets are changing significantly. They play an important role in the transition to a "low carbon economy, based on low carbon electricity generation and energy-efficient energy-using technologies". In fact, "the way in which energy is generated and used" is strongly linked to metals¹⁰¹. The change to a low carbon society and the production of new and clean technologies will require huge quantities of metals and minerals¹⁰².

Exploitation and consumption will continue to grow in the coming years in the case, for example, of the silicon, of the selenium, of the tellurium, of the cadmium, of the tin: their exploitation is extremely important to the technological development of new sources of energy, like the photovoltaic cells. In the production of catalytic converters, the exploitation concerns Rare-Earth Elements (REE), platinum, palladium and rhodium. Others, like iron, copper, aluminium, REE, are fundamental for wind turbines which are nowadays being installed in many countries: this is within the framework of international law compliance for reducing carbon dioxide, for example the United Nations Framework Convention on Climate Change and other environmental protection national laws. So far, considering the new developments and the evolution of the market for electric cars, metals such as lithium, the REE and gold will be increasingly exploited. In keeping with the laws that affect energy saving and CO₂ reduction, demand in international markets for REE, antimony, and indium, which are used to produce Light-Emitting Diodes (LED), is growing significantly. The demand for germanium has temporarily declined during the global economic crisis (2008-2009)¹⁰³, but then it has grown again due to its use in the semiconductor industry for new-technology applications "including special glasses, LEDs, photovoltaic cells and photoreceptors"¹⁰⁴. Instead, one of the most interesting products, containing as many as sixty elements, is the smartphone. The demand for these technological appliances has exploded in recent years and will continue to grow.

¹⁰⁰ Ivi, p.5.

¹⁰¹ WORLD BANK GROUP 2017, p.XVI.

¹⁰² VIDAL O., GOFFÉ B., ARNDT N. *Metals for a low-carbon society*, Nature Geoscience, 2013, 6 (11), pp.894-896.

¹⁰³ U.S. GEOLOGICAL SURVEY *Metal Prices in the United States Through 2010*, Scientific Investigations Report, pp.55-56.

¹⁰⁴ ARNDT T., FONTBOTE' L., HEDENQUIST J.W., KESLER S. E., THOMPSON J.F.H., WOOD D.G. 2017, pp.5-6.

As we outlined before, the two main groups interested in mineral supplies are governments and industries. It is also clear that, perhaps unconsciously, many other businesses and consumer lobbies are directly affected by mineral supplies. However, if governments are responsible, through different agencies, to make global estimates, industries are doubtlessly accountable for providing data on deposit and stocks. The "industry's principal interest in evaluating mineral deposits is to determine how much material is mineable at current prices, or potentially mineable if prices increase or decrease"¹⁰⁵. Exploration MNCs quantify the concentration of materials present in a certain place by drilling at various points, collecting samples and making an evaluation of the minerals that are deposited there. If the concentration of materials the company is looking for is particularly high, and if it is financially viable for the company to extract it and / or process it, taking into consideration the current prices and the extraction costs, then this will be "first described by industry as a 'resource' and then part of this material might be reclassified as 'ore' - i.e. material that can be mined and processed inexpensively under present conditions. Materials that fail this test may require more complete sampling, higher metal prices, better mining methods, or other economic or technological developments to qualify as ore. If prices increase significantly, some of these materials become ore"¹⁰⁶.

As we mentioned before, in the geological literature an 'ore deposit' is a "mass of rock that contains a useful element, compound or mineral with a grade (concentration) and total amount sufficiently high that the material can be mined economically"¹⁰⁷. So it is only when categorised as 'ore' that a material becomes part of the asset valuation of a company, and is therefore considered 'discovered' and mineable. It is also necessary to underline that, in addition to being technically and economically exploitable, an ore deposit must also obtain legislative authorisation. Although in this thesis we are dealing with an extreme case (in the east of the DRC many mines are illegal also due to the governance problems of the country) we want to emphasise that the control of subsoil resources belongs to the state which has the right to issue licenses to exploit them. In this sense, the state has the power to delegate the extraction to private groups, which are in turn legitimised precisely by this legislative authorisation to work in a certain area.

When it is not referred to as 'ore', this does not mean that mineral resources are not presents in a certain land or territory. It rather means that, they are not considered to be part of the stock of a company, so it will not be included in the government estimates. This means that there are plenty of

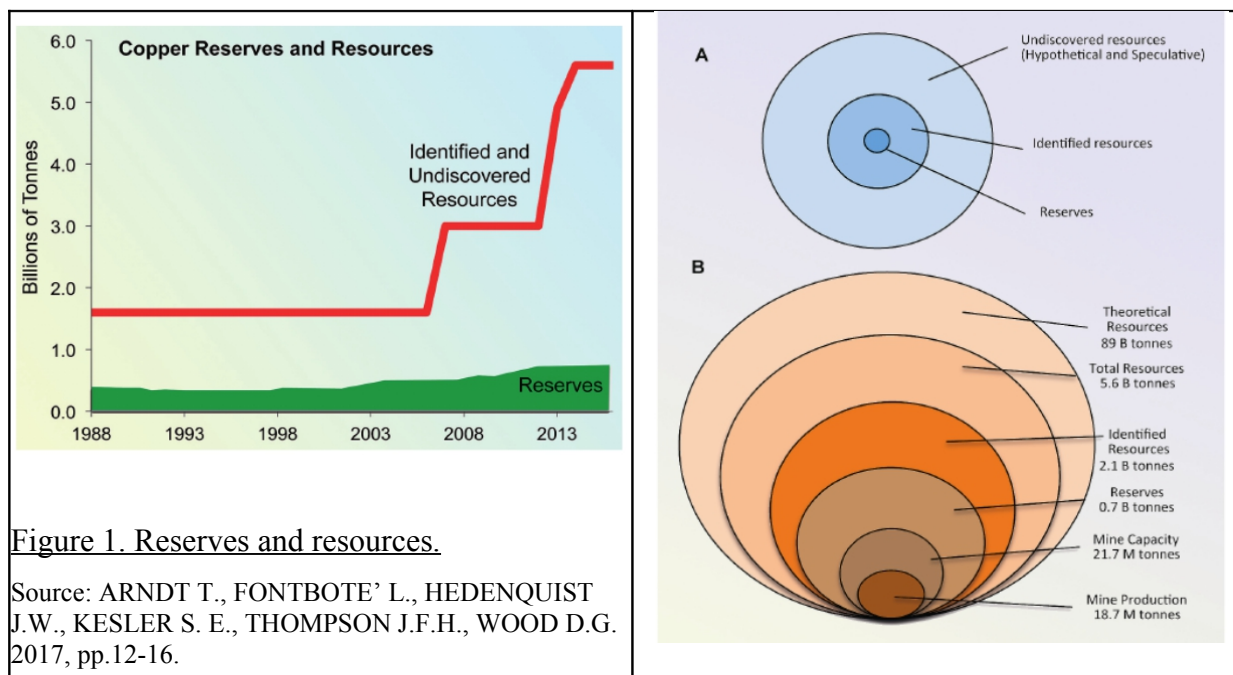
¹⁰⁵ *Ivi*, p.7.

¹⁰⁶ *Ibidem*.

¹⁰⁷ *Ivi*, p.18.

deposits in the planet, which are considered resources that not intended for use at a given time on the grounds of not being financially viable. When a company has enough reserves as well as its ore to extract, then it will not be interested in discovering new resources. On the other hand, when the prices of some material increase or a new mining or processing method is discovered, then a resource becomes a reserve. Likewise, when ore reserves are exhausted, the company will start to search undiscovered resources.

Finally, for the purpose of this research, we use the term *resource* when referring to all mineral materials valued around the planet. Additionally, we use the term *reserve* when talking about a resource that is considered mineable for a certain period of time. In conclusion, we understand that there is a "huge difference between the estimates of reserves made by industry (ore reserves) and the various estimates of global resources"¹⁰⁸. Furthermore, the economic calculations made by the MNCs do change meaningfully the estimates of the government agencies.



¹⁰⁸ Ivi, p.17.

1.2. The importance of minerals for the EU economy

As underlined by Tiess, Drnek observes that, in modern economies "raw materials are used for the production of economic goods, in principle serving three purposes: as a source of energy, as material components of goods in material goods production, and furthermore, as process additives, for instance fertilisers in agriculture". Raw materials are important because they represent the base of the production in every economic sector, in every corner of the world and in every material good. In order to compete and to endorse any national economies, governments should take care of the processes involved in obtaining raw materials. It is clear that the need of every country depends on its degree of industrialisation and on the characteristics of its economic fabric. Even the ability to compete for these resources depends clearly on the power capability inherent to a certain state of affairs. Regardless, all countries in the world have to deal with raw materials and have an interest in their retrieval and exploitation. No matter which sector depends primarily on the economy of a given country, whether it being primary, secondary or tertiary; raw materials are always crucially important for economic performance.

If we consider the EU economy, it is becoming increasingly apparent that it is based on the tertiary sector. However, two important considerations have to be made: first that the demand for raw materials will continue to grow in the coming years, for many factors, which we will examine later. Secondly, the industry in Europe continues to play a key role, above all for its contribution to employment and added value. This is despite the fact that the European industrial system has radically changed since it has integrated itself into the global economy. For example, we should consider the EU steel production: in 2002 the total output value of the steel industry was € 220 billion, which equals to "2,5% of the total value of the industrial production, and the added value amounted to € 49 billion. The sector employs 412,000 people, representing 1,25% of the total employment in EU manufacturing (...) The EU represents 16% of world output and is the second largest producer behind China"¹⁰⁹. So to sum up, it must be stated that, despite the fact that the EU's economy is based on the tertiary sector, the secondary sector is still playing a primary role. It is the case of the European building industry, the engineering and electrical industries, the mechanical and automotive industries, etc..

It is therefore evident that both the EU and the individual MS are interested in the development of a mineral policy based on minerals supply. It is therefore prudent to ask exactly what we mean when

¹⁰⁹ TIESS G. 2011, p.4.

we talk about mining policy. Generally speaking, Tiess's definition is helpful, which states that "minerals policy is to be defined as a policy to secure the (sustainable) supply of the economy with (non-energetic) mineral resources". If we transpose this definition and adapt it to the EU economy, we could say that "a European mineral policy can be defined as a policy to secure the (sustainable) supply of the EU economy with (non-energetic) mineral resources by the entirety of actions of the EU for influencing the supply of mineral resources on its territory and beyond that"¹¹⁰. Elements of a hypothetical mineral policy could include aspects like the necessity to adopt a certain conduct or practices in order to reduce the consumption of raw materials and to introduce measures to increase efficiency which in turn increases the sustainability of the materials¹¹¹. Other specific aspects of a mineral policy should set "a balanced approach in the assessment of exploration and development of extractive activities"; a clear prospectus which explains the "situation of demand and supply of a nation"; a system that allows the production of "medium to long-term demand for minerals, ensuring that there is sufficient 'supply offer' (...) including access to minerals outside of a country"; and an "environment for a balance between demand and supply"¹¹².

1.2.1. Current EU mineral consumption

Non-energy raw materials are at the beginning of the production process and are essential to its development, which ensures growth and performance in a country's economy. It is necessary to remember that raw materials are divided into metallic minerals, industrial minerals and construction minerals. It is important to understand the difference between these materials because this provides insight into the needs of the market and therefore the laws that regulate it. In the case of this thesis, we will analyse the EU law on conflict minerals. These 3TG minerals all belong to the first category: metallic minerals.

Historically the exponential growth in demand and consumption of minerals begins with the advent of the industrial revolution and continues throughout the 20th century. The increase in demand for mineral raw materials of all sorts continues to grow today and the trend will probably continue. As it has already been pointed out earlier in this thesis, the global distribution of raw material deposits is totally inhomogeneous. Additionally, the development of the international raw material market is due to the fact that many countries are consumers but not producers. Today the consumption of metallic minerals in the EU is about 30% of the global consumption: even if this number included

¹¹⁰ *Ivi*, pp.138-139.

¹¹¹ *Ivi*, p.183.

¹¹² *Ivi*, pp.183-186.

EU production, the majority of the minerals would have to be imported from countries outside the EU. Most of the minerals imported by MSs are transformed into semi-finished and finished products for many different uses. To get a better understanding of the size, the value and the EU's dependence on other countries for mineral imports, it is important to note that "as an illustration, 168 million tonnes of metallic minerals were imported into the EU in 2004 with a total value of € 10 billion, compared to the EU's production of some 30 million tonnes. In other words, consumption of 30% of all metallic minerals is contrasted with just 3% of world production. In 2006, the percentage of the EU's self-sufficiency concerning the supply of metallic minerals was rather low: iron 1,99%, chromium 5,36%, tungsten 4,27%, nickel 2,03%, manganese 0,11%; cobalt, molybdenum, niobium-tantalum, vanadium 0% respectively"¹¹³.

We should now clarify the distinction between industrial and construction minerals. The EU is a net importer of industrial minerals which are used in "downstream industries, such as glass, foundry, ceramics, paper, paint and colorants, and plastics industry"¹¹⁴. Aside from this, the EU is also a huge producer of certain industrial minerals, extracted and processed in practically all MS: "in 2006, the EU was the world's largest producer of feldspar (60%), perlite (54%), kaolin (31%), gypsum (23%), salt (22%), and the second largest producer of Fuller's earth, bentonite, talc and potash. The European share of global industrial production is about 20%. Nevertheless, the EU is a net importer of industrial minerals as a whole"¹¹⁵. This leads us to ask from which countries exactly do the EU import industrial minerals? Taking into account a ranking based on the value of imports, we find at the first place the USA (18%), then Morocco (13%), Ukraine (11%), Brazil (10%), Russia (10%), China (6%), Turkey (4%) and other countries (28%)¹¹⁶. However, when dealing with these figures, we must remember that these proportions are bound to change, because these can rapidly be altered by some developing countries. At the same time they could be useful to understand market trends during last decades and can make us understand the future development of this trade. Instead, in terms of the value of industrial minerals exports to non-EU countries, it is calculated that approximately 11% is destined to Norway, followed by Switzerland (7-8%), Morocco (7%), USA (6%), Turkey (6%), Indonesia (4-5%), China (4-5%), Japan (3%), Malaysia (3%) and Canada (3%)¹¹⁷.

¹¹³ *Ivi*, p.69.

¹¹⁴ *Ivi*, p.71.

¹¹⁵ *Ibidem*.

¹¹⁶ Data by EC, *Commission Staff Working Document*, 2007, Eurostat.
Cf. TIESS G. 2011, p.73.

¹¹⁷ *Ivi*, p.76.

Leaving for a moment the subject of industrial minerals aside, let us briefly explore the subject of construction minerals. In so doing, let us clarify that the use of construction minerals is multiform and is dedicated at building roads, rail and all kind of buildings and other infrastructure. For this third non-energetic raw material sector, we note that the EU is self sufficient. Not only is European production enough to feed its market but it is also substantial enough for export¹¹⁸. While it is crucial to acknowledge the importance of this sector, this may not be relevant for the purpose of this thesis.

Let us now continue the analysis of the EU's current development of minerals consumption, highlighting the rapid change in the world supply of metallic raw materials from the late 1980s. The change has occurred because of the quick development of a number of Asian countries, especially China, India and the Four Asian Tigers (Taiwan, Hong Kong, Singapore and South Korea). The 1980s was an important historical moment, because that period marked a change in the world consumption of minerals, with the EU's consumption increasingly moving towards Asia. This also shows the close correlation, cited above, between economic growth and the increased consumption of raw materials. Following the important rise in demand since the early 1980s, even production and prices of metals have increased¹¹⁹.

The effects of raw materials on European industry and its political economy have been interesting. First of all, the global increase of production costs have immediately put European companies under pressure, reducing their planning reliability. Moreover, speculations is also growing at this time in the commodity market, increasing the risk for MNCs to find and obtain supplies at affordable prices. Among other things, the sharp rise in raw material prices, over a short period of time, has attracted many speculators, especially before the 2008 global financial crisis¹²⁰. Finally, we should point out that the rise in commodities has also had a negative impact on the exports of a number of EU countries. This is caused by the fact that raw materials are mainly used to produce capital goods, which are exported from European countries¹²¹.

1.2.2. Future scenarios associated with mineral consumption

It is difficult to predict which minerals will be in demand in the future and in what quantities they

¹¹⁸ *Ivi*, pp.76-82.

¹¹⁹ *Ivi*, pp.82-97.

¹²⁰ *Ivi*, p.101.

¹²¹ *Ivi*, pp.102-103.

will be needed, as this depends on the market and on other unpredictable factors. Regardless, exploration continues everywhere, particularly in areas that for various reasons have been left unexplored in the past. The progress of technology allows exploration of new areas and also the use of materials that previously had no clear use. With technological development it is also possible to explore deeper into areas where ore had been previously searched for and apparently not been found or used up. Technology or a "new cleaner mining process" makes possible a more affordable exploitation of "low-grade ores and complex deposits with processing, location or environmental challenges"¹²². As the global demand for minerals is continuing to grow to extremely high numbers, also because of the increasing world population, new types of ore are being identified. Some new minerals are emerging showing their high potential use in new technologies. This is the case, for example of the bastnäsite, part of the family of three carbonate-fluoride minerals which is now very important for REE. This is also the case for other altered volcanic rocks that are useful sources of lithium and boron. Cathles, among other scholars, also "notes that both seawater and brines in major crustal aquifers contain substantial amounts of metals that could be extracted in the future"¹²³.

Accessing certain locations can present a few challenges for geologists, in their search for precious materials, in particular now when the focus is on seafloors. Efforts are focusing on the mining of massive sulphides present on the seafloors, because "seafloor nodules and crusts, known for several decades, are rich in manganese and can contain nickel, cobalt, copper and, in some cases (...) REEs"¹²⁴. It becomes therefore clear that it is possible to continue exploiting resources in the future.

Lastly, there are many more exploration activities than effective mines being exploited. However, orebodies are extremely difficult to reach. As resources are not geographically and spatially equally distributed on the planet, it is not possible to know where minerals are located before drilling. We should add that many ores are very problematic to explore or inaccessible for different reasons, for example, the higher costs of extraction. In order to overcome this uncertainty, MNCs try to go deeper with their explorations, focusing on existing mines.

Aside from the various exploration techniques and without getting too into the substance of potential crises that might occur in countries of extraction, we can affirm that the global demand could be satisfied by the amount of minerals available. The drastic price fluctuations observed are due to many factors, but usually do not represent the possibility of exhaustion of a given mineral.

¹²² ARNDT T., FONTBOTE' L., HEDENQUIST J.W., KESLER S. E., THOMPSON J.F.H., WOOD D.G. 2017, p.50.

¹²³ *Ibidem*.

¹²⁴ *Ibidem*.

Probably the demand for certain minerals will increase dramatically in the coming years, as is the case for minerals needed for the construction of electric vehicles. It is also likely that the demand for other minerals will drop, allowing the entire global raw materials market to stay balanced. This, however, does not protect individual countries or producers, which could lose their procurement of raw materials and thus have problems in obtaining them. It is necessary to specify that in the short term it is not easy for a company or a state to replace a single mineral used or imported. Furthermore, it is also possible that when demand for a certain material grows fast, so prices increases quickly, companies could run into stock-outs. So MNCs want to be protected against these attacks.

Another present and future risk is represented by the fact that some countries and some MNCs have a very strong presence in the market for certain minerals. One important example is China: it currently produces ninety percent of REE, indispensable components in the development of electric cars, solar panels, etc. These monopoly or oligopoly positions, along with any other policy measures, could cause big retrieving problems in the future. This concentration of offer in the hands of some states or multinationals has been particularly acute since the nineties¹²⁵. Future complications in mineral consumption could arrive from excess demand. According to Skinner's analysis, global mineral commodity demand could increase by 5 times over the next 50 years. This is due to the rapid growth and the economic development, fuelled by globalisation, of some countries, together with their growing geopolitical aspirations¹²⁶. The increase in purchasing power in these countries that are growing rapidly, especially in Asia and Africa, will undoubtedly lead to an explosion of demand for smartphones, electric cars¹²⁷, computers, solar panels, etc.

Other factors related to the globalisation process have also contributed to the rapid growth of the global economy and the increased demand for raw materials. These factors are: deregulation measures, the development of communication systems and logistics, greater integration of states into the world economy and improved economic development models¹²⁸. Once again the example is that of China. In fact, China's economic performance in recent years corresponds to its growth consumption of resources. Consequently, China must also worry about securing its supply chain. For this reason the Chinese Chamber of Commerce for Metals, Minerals and Chemicals Importers

¹²⁵ TIESS G. 2011, pp.103-104.

¹²⁶ *Ivi*, p.106.

¹²⁷ Just to make an example concerning electric cars: "the global motor vehicle stock will rise from approx. 800 million in 2002 to 2,080 million by 2030, whereas in non-OECD countries, an increase by 195 to 1,172 million is expected". Cf. TIESS G. 2011, pp.108-109.

¹²⁸ *Ivi*, p.106.

and Exporter (CCCMC) is discussing with Chinese and international partners a draft law for its mineral supply chain. The 'Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains' is an initiative very similar to that of the EU and the USA Dodd Frank Act; it has also been welcomed by some international NGOs, such as Global Witness¹²⁹. In fact, when we read the draft proposal of 2015, we find that one of the main goals of the initiative is to advocate for "decreased disruptions in supply caused by conflict and weak governance in producing countries"¹³⁰. In addition, other expected benefits for China wanting to adopt a similar law reflect the ambition to "enable more informed and strategic decision-making", to "meet expectations of customers and markets on responsible mineral resources" and to "improve reputation of participating companies and of the Chinese industry"¹³¹.

Consequently, is important to consider that the cause of the increased mineral consumption is mainly due to the galloping growth of emerging economies: BRICS countries, Turkey, Mexico, Indonesia, are expected to strongly increase their GDP¹³². The 'African lions' will strongly contribute to the global galloping economy growth too¹³³. This growth will demand huge quantities of raw materials, for these countries and their partners.

1.3. The great changes of the mineral industry in the 21st century

Nowadays, an increasing number of countries which produces raw materials are changing their role and strategy in the global market. Increasingly these countries do not just want to export raw

¹²⁹ Taken from the website of Global Witness; www.globalwitness.org; accessed on 26/10/2017.

¹³⁰ CCCMC, THE CHINA CHAMBER OF COMMERCE OF METALS, Minerals and Chemicals Importers & Exporters, *Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains*, 2005, p.5; www.cccmc.org.cn; accessed on 26/10/2017.

¹³¹ *Ibidem*.

¹³² TIESS G. 2011, p.109.

¹³³ Scientific literature is still fairly poorly in providing definitions about African lions, understood in the economic sense. We found some definitions and examples in some newspaper articles. THE GUARDIAN, for example, identifies as African lions those African countries that have surpassed the BRIC countries for their per capita income. In 2008, therefore, we found out that South Africa, Algeria, Botswana, Egypt, Mauritius, Libya, Morocco and Tunisia exceeded 10,000 USD, while the BRIC countries stopped at an average per capita income of 8,800 USD. Instead, another well-known book, *Africa's Lions*, identifies 6 rapidly growing countries and economically dominant African economies in the continent. These countries are: Ethiopia, Ghana, Kenya, Mozambique, Nigeria, and South Africa. Finally, a global risk insights article identifies ten African countries that are growing at very high rates. They are: the Democratic Republic of Congo, Chad, Angola, Mozambique, Nigeria, Côte d'Ivoire, Sierra Leone, Ghana, Ethiopia, Rwanda. According to GRI, the growth of these promising countries, however, is threatened by issues of security and stability.

BEAUGE' F. *Economic power of the 'African lions' tallied*, 8/6/2010; www.theguardian.com; accessed on: 27/10/2017;

BHORAT H. *Africa's Lions Growth Traps and Opportunities for Six African Economies*, Brookings Institution Press, 2016;

MELLIS M. *Ten African lions set to outrun Asia's tigers*, 7/11/2013; www.globalriskinsights.com; accessed on 27/10/2017.

materials, they also want to work these materials and sell them as semi-finished products, developing the production directly in the country where materials are extracted. Although the mineral industry in the 20th century was heavily dominated by large Anglo-Saxon groups (De Beers, Anglo American Corporation, etc.), the beginning of the 21st century was characterised by the rapid arrival of large mining and metallurgical groups from BRICS countries¹³⁴ and generally from emerging countries. In the age of globalization, changes are accelerated and the risks may be greater or otherwise quickly amplified by time. Changes, and the risks linked to it, are also accelerated by the emergence of new powers, China first of all (but not the only one) as regards the use of raw materials. China today ranks first in the production, trade and processing of raw materials and plays an extremely important role in this field.

Below we will give some examples of huge metallurgical groups from emerging countries operating all over the world. These examples serve to understand the importance that these groups have achieved in a few years, and which has led them to compete with EU companies.

Aluminium Corporation of China Limited is the world's second-largest aluminium producer and the third-largest primary aluminium producer. The products of Chinalco are used in petrochemical, laundry, cable, ceramics, refractory material and aerospace industries, in addition to transportation, packaging, construction, electricity and many other consumer goods. In 2010 this company achieved a net profit of almost 100 million euro¹³⁵.

Shanghai Baosteel Group Corporation "manufactures premium steel products with high technologies and a high added value and fosters three major product categories, namely carbon steel, stainless steel and special steel". In 2005 the company produced more than 20 million tons of steel. It is the leading provider of the Chinese auto industry¹³⁶.

Jiangxi Copper is "the biggest copper cathode producer and a supplier of copper products with different varieties" which has diversified its business manufacturing different materials "from mineral resources development including copper, gold, silver, rare earth, lead and zinc to trade, financial, logistics field and technical support"¹³⁷. Like many listed Chinese MNCs, in only three decades Jiangxi Copper has become a huge and important producer throughout the world.

¹³⁴ Brazil, Russia, India, China and South Africa.

¹³⁵ Cf. Aluminium Corporation of China Limited (CHINALCO) Official website; www.chalco.com; accessed on 5/10/2017.

¹³⁶ Cf. Baosteel Group Corporation Official website; www.baosteel.com; accessed on 5/10/2017.

¹³⁷ Cf. Jiangxi Copper Corporation Official website; www.jxcc.com; accessed on 5/10/2017.

China Minmetals Corporation (CMC), "is China's largest and highly international metals and minerals corporate group, and also the largest and strongest in metallurgical construction and operation services globally". With 200,000 employees, it produces and trades metals and minerals, including copper, aluminium, tin, antimony, lead, zinc, nickel and tungsten (of which CMC is the world's largest producer)¹³⁸.

Even some Indian corporations have become world leaders for trade and production of minerals, often in a very short period of time. As an example of this the company Mittal Steel, the world's leading steel and mining company, works in the production from raw materials to the finished product, "from iron ore and coal mining providing a full range of steel products and service offerings". Since taking over Arcelor in 2006, the company headquarters has moved to Luxembourg. In 2008 the company had around 320,000 employees and was present in more than 60 countries. In 2016 the company produced more than 55 million tonnes of iron ore and "6,9 million tonnes of coking coal, a form of carbonised coal burned in blast furnaces to melt iron"¹³⁹. The annual turnover is about 60 billion dollars.

Another Indian industrial group worth mentioning is Tata Steel (TISCO), India's second company for steel production. It is on the list of Fortune Global 500, as it is among the most important societies in the world. It is an historical global business conglomerate of companies, established in India over one century ago and operating today in more than 100 countries. Tata enterprises employ over 660,000 workers. The group "has a strong presence across diverse industries such as agrochemicals, automotive, chemicals, construction, finance, consumer products, and hospitality"¹⁴⁰.

We should continue to explore examples of MNCs which play world leading roles in the mineral trade and industry all over the world, especially from emerging powers. They represent an important change in the international mineral industry of the 21st century, which has in part led the EU to an initiative that regulates the mineral trade. Let us now list a couple of Brazilian corporations that are playing a role of primary importance in world trade.

Companhia Brasileira de Metalurgia e Mineração (CBMM) is the first world producer of niobium, formerly columbium and accounts for, 80 per cent of the world's supply¹⁴¹. CBMM develops the

¹³⁸ Cf. China Minmetals Corporation (CMC) Official website; www.minmetals.com; accessed on 5/10/2017.

¹³⁹ Cf. ArcelorMittal Official website; www.corporate.arcelormittal.com; accessed on 5/10/2017.

¹⁴⁰ Cf. Tata Steel (TISCO) Official website; www.tatasteel.com; accessed on 5/10/2017.

¹⁴¹ According with www.cbmm.com; "the most important application for niobium is as an alloying element to strengthen steel without impairing its ductility properties. These steels are used in the automotive industry and to

technological application of niobium starting from niobium: this metal is extracted mainly in the Araxá ore deposit which should be exploitable for another 200 years, if the consumption rates continue at current rhythms¹⁴².

Another company from Brazil specialised in transforming natural resources which is among the largest in the world is Vale. According to their website, it is ranked first place in global production of iron ore, pellets and nickel. It produces almost 350 million metric tons of iron ore, 331,000 metric tons of nickel and more than 46 million of metric tons of iron ore pellets¹⁴³.

Other major global players are present in Mexico. For example, the company Grupo Mexico is the main mining company in the country and one of the world's leading producers of copper, with more than 1 million tons in 2016. In this same year the corporation, which has important subsidiaries in the US and Spain, has invested a total of 1,210 million USD. The company is listed in the New York stock exchange and the Bolsa de Valores de Lima. It possesses the most important rail transport infrastructure in Mexico¹⁴⁴.

Finally, the last group identified by this study is Peñoles, based in Mexico City and active in mining, metallurgical and chemical sectors. This is the second largest mining company in Mexico and the largest Mexican producer of gold, zinc and lead. It is the world leader in silver production. The company also produces copper, bismuth and cadmium. Others businesses of the MNCs include infrastructures, geological prospects, water service companies, energy production and chemicals products¹⁴⁵.

These examples show us a number of MNCs that have become world leaders in the market of raw materials and semifinished products, competing hard with EU enterprises. Among all these actors, the most important is China. This is because the Chinese Government is actively supporting mining which is considered a strategic sector and is essential for the development program that the country has set. One result of the diplomatic action and active government support to Chinese MNCs is that between 1986 and 2009, China increased its leadership role from first world producer of five to twenty-eight raw materials of mineral origin¹⁴⁶. Indeed, the ambitious strategy of China would go

build oil and gas pipelines and large structures. (...) Non-steel applications for niobium include aircraft turbines, land-based power generation turbines, optical lenses, medical imaging devices and chemical catalysts".

¹⁴² Cf. Companhia Brasileira de Metalurgia e Mineração (CBMM) Official website; www.cbmm.com; accessed on 5/10/2017.

¹⁴³ Cf. Vale Official website; www.vale.com; accessed on 5/10/2017.

¹⁴⁴ Cf. Grupo México Official website; www.gmexico.com; accessed on 5/10/2017.

¹⁴⁵ Cf. Peñoles Official website; www.penoles.com.mx; accessed on 5/10/2017.

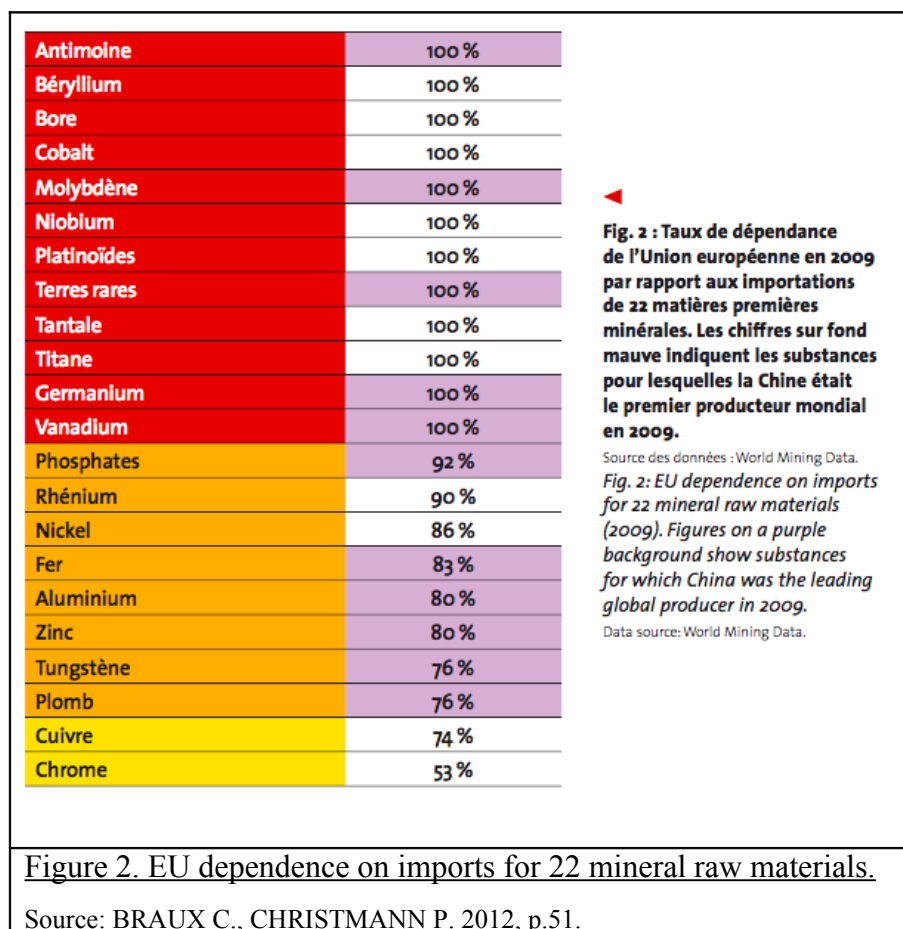
¹⁴⁶ BRAUX C., CHRISTMANN P. *Facteurs de criticité et stratégies publiques française et européenne. Enjeux et*

further if possible, exporting less crude and raw materials and focusing on domestic production. Following this strategy, today China is able to produce and export airplanes, electric vehicles, wind turbines, solar panels and most of the electronic consumer goods demanded on the global markets. The Chinese example is nonetheless a relevant demonstration of how states are concerned to promote and protect their strategic mining sector and the other industries that depend on it.

The EU initiative has therefore been undertaken also with a view to stem the competition from emerging countries and is intended to ensure the supply chain of European enterprises. The mining sector is a flagship of modern capitalism: as well as mobilising huge amounts of money, this sector is highly technological and requires extremely high scientific skills. Consequently, emerging powers have increasingly concentrated their investments in strategic sectors such as industry of minerals.

1.3.1. First reactions of MSs to face changes of the mineral industry

Figure 2 illustrates the EU dependence on imports for 22 mineral raw materials.



It is clear from figure 2 that the EU is totally dependent for twelve out of twenty-two of these raw materials. For another eight of these materials, the EU is highly dependent on others. With the exception of very few cases, the EU's natural resources cannot satisfy the needs of its companies. As a consequence it is possible to claim that the European market is highly vulnerable and dependent on mineral resources. That's why EU countries have felt the need to react to this risk.

The first country to move in this direction was Germany. Already in 2007, the Federal Government adopted a strategy to ensure the supply chain of raw materials, consisting of large voracious German industries. In 2010 the Federal Government created the *Deutsche Rohstoffagentur*, an agency for coordinating mineral raw materials belonging to the German Federal Institute for geosciences and raw materials. In addition, *Rohstoffallianz*, a purchasing company managing orders for all its members, was established in 2012.

France has also mobilised to deal with the precarious situation of securing minerals. In 2010 the government established the *Comité pour les métaux stratégiques* which is under the supervision of several Ministers¹⁴⁷. The duties and responsibilities of this committee are listed as follows: to study and observe the supply of raw materials of particular interest for the national economy; to study new methods of recycling of some rare minerals; to inform and raise awareness among companies in order to enable them to assess the risks to which they are exposed if they consume certain mineral raw materials¹⁴⁸.

1.3.2. First EU initiative to face changes of the mineral industry

Almost at the same time as some MSs, the EC made its first steps and in 2008 launched the raw materials initiative¹⁴⁹, which is at the heart of the analysis of this study. In this historic text, the EC acknowledges that mineral raw materials are essential to the sustainable functioning of the EU economy. The need of "securing reliable and undistorted access to raw materials is increasingly becoming an important factor for the EU's competitiveness and, hence, crucial (...) for growth and jobs". This is because "a total value added of € 1,324 billion and employment for some 30 million people" depend on access to raw materials, in order to satisfy "sectors such as construction,

¹⁴⁷ Ministère de la transition Ecologique et solidaire, Ministère de l'économie, Ministère de l'enseignement supérieur, de la recherche et de l'innovation; Cf. Minéral Info it is a French website of non-energy mineral resources; www.mineralinfo.fr; accessed on 10/10/2017.

¹⁴⁸ BRAUX C., CHRISTMANN P. 2012, pp.51-52.

¹⁴⁹ EU *The raw materials initiative - meeting our critical needs for growth and jobs in Europe*, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, Brussels, 4/11/2008, COM(2008) 699; www.eur-lex.europa.eu; accessed on 10/10/2017.

chemicals, automotive, aerospace, machinery and equipment"¹⁵⁰. Moreover, it is increasingly important for the EU to aim at a more efficient use of resources and to promote sustainable development.

The initiative is originally based on the three following pillars: I) "ensure access to raw materials from international markets under the same conditions as other industrial competitors"; II) "set the right framework conditions within the EU in order to foster sustainable supply of raw materials from European sources"; III) "boost overall resource efficiency and promote recycling to reduce the EU's consumption of primary raw materials and decrease the relative import dependence"¹⁵¹.

With the first pillar, the EU plans to relaunch its diplomatic activity around raw materials, in order to ensure safe access to resources. The plans include also strengthening the ties with strategic partners, following mutual interest principles. In the case of Africa in particular, the EU intends to strengthen "its dialogue and actions in the area of access to raw materials and on natural resources management"¹⁵². In other words, this initiative is an opportunity to boost cooperation with African countries. Furthermore, and of equal importance, the EU's initiative aims to enhance international cooperation with other important partners in the field of raw materials, especially USA, Japan, China and Russia. Another objective of the EC is to support instruments of social responsibility and "to promote transparency in the extractive sector"¹⁵³.

The EC initiative is part of the EU's trade and regulatory policy and is designed in compliance with other multilateral and bilateral agreements signed by MSs with other actors, first of all the WTO. In fact, EC communications express particularly support the need to combat all measures of third states that could put at risk the availability of raw materials for the European market. In particular, the EU is vigilant against every "protectionist use of export restrictions by third countries" because "that pose(s) the greatest problems for EU user industries or give(s) their domestic downstream industries an unfair competitive advantage on international markets"; in addition the EU is also vigilant of "dual-pricing practices or other mechanisms in operation in the exporting country", which could also represent an obstacle for EU businesses.

¹⁵⁰ *Ivi*, p.2.

¹⁵¹ *Ivi*, pp.5-6.

¹⁵² *Ivi*, p.6.

¹⁵³ Among these instruments we signal the Kimberly Process Certification Scheme, EITI (Extractive Industries Transparency Initiative) and EITI++, "a complementary initiative by the World Bank to the EITI that seeks to develop national capability to handle the boom in commodity prices and channel the growing revenue streams into fighting poverty, hunger, malnutrition, illiteracy, and disease".
Cf. COM(2008) 699, p.6.

According to the EC, the initiative on raw materials fits coherently "between the EU development policy and the EU's need for undistorted access to raw materials in order to create win-win situations: good governance, transparency of mining deals and mining revenue, a level playing field of all companies, financing opportunities, sound taxation regimes and sound development practices are beneficial for both developing countries and the EU's access to raw materials"¹⁵⁴. In this sense development policies associated with the EC initiative on raw materials, are relevant for three main aspects: I) to strengthen states, promoting "economic, social, environmental and political good governance" thanks to the support of EU development and assistance programmes; II) to promote a sound investment climate, connecting companies and countries, increasing transparency and favouring a fair taxation system; III) to promote a sustainable management of raw materials, supporting third countries to develop their policies and to improve social and environmental standards¹⁵⁵.

Let us now move on to the second pillar of the initiative, which aims to 'set the right framework conditions within the EU in order to foster the sustainable supply of raw materials from European sources'. This means that there is a focus on the need, within the EU framework, to determine the conditions to promote sustainable raw materials supply from European sources. It is also for this reason that the EC plans to invest in measures like "research projects that focus on the extraction and processing of raw materials"; this should have the double aim of supporting businesses and to raise the "public awareness of the importance of domestic raw materials for the European economy"¹⁵⁶. Additionally the EC highlights the importance of "better networking between the national geological surveys to facilitate the exchange of information and improve the interoperability of data and their dissemination"¹⁵⁷ in order to make better use of land. The EC seems to point particularly to the research and development of new exploration techniques in order "to identify deeply located onshore and offshore resources (including deep sea mining), and new extraction technologies to maximise economic and environmental benefits"¹⁵⁸. All the measures of EC contained in the second pillar are used, within the EU framework conditions, to determine and to promote a supply of sustainable raw materials from European sources.

The third pillar of the EC's 2008 communication aims to energise the overall efficiency of the

¹⁵⁴ *Ivi*, p.8.

¹⁵⁵ In particular the COM(2008) 699 at p.9, suggest that the measures introduced by the initiative, could improve the growing artisanal and small-scale mining sector, which currently has 100 million workers worldwide.

¹⁵⁶ COM(2008) 699, p.9.

¹⁵⁷ *Ibidem*.

¹⁵⁸ *Ibidem*.

resources that are used in the EU, to promote recycling in order to reduce the consumption of primary raw materials, and to reduce the relative reliance on imports. With this last pillar, the EC outlines the need to promote "resource efficiency and eco-innovative production processes, to reduce dependency on raw materials and to encourage optimal resource use and recycling"¹⁵⁹. Furthermore the use of renewable raw materials is considered a future requirement to enable the EU's transition into a resource efficient economy. The EC's guidelines include research projects for the design of resource-efficient products that incentivise the development of substitutes. Still, the EC calls on the MSs to ensure the recovery of secondary raw materials, which are materials that have already been used but which are still recoverable: these materials are often not recovered from the recycling channels. This is also due to the fact that the MSs have different systems and recycling laws which in many cases fail to be efficient. The ability to retrieve all kinds of reusable products will also be an advantage because it could avoid the pollution produced by exporting end-of-life products and by importing raw materials from outside the EU. In this sense, the EC appointed to enforce the recycling legislation by implementing different directives¹⁶⁰.

In summary, the EC has launched an initiative on raw materials following pressure from MSs to ensure competitiveness among their companies. The three pillars intend to ensure access to resources in third countries, to facilitate "better framework conditions for extracting raw materials within the EU", to promote the use of recycled materials and increment resource efficiency¹⁶¹. Other major points of interest of the initiative are: the launch of strategic diplomatic activities aimed especially at resource-rich countries; the promotion of sustainable management of raw materials, which should also be included in every other treaty or trade agreement; the increased ability to identify possible business improprieties thanks to increased monitoring of trade and cooperation with new and old partners; to promote research and study of new techniques for exploration, mining, processing, recycling of raw materials (facilitating the use of secondary raw materials) and energy efficiency; "increase resource efficiency and foster substitution of raw materials"¹⁶².

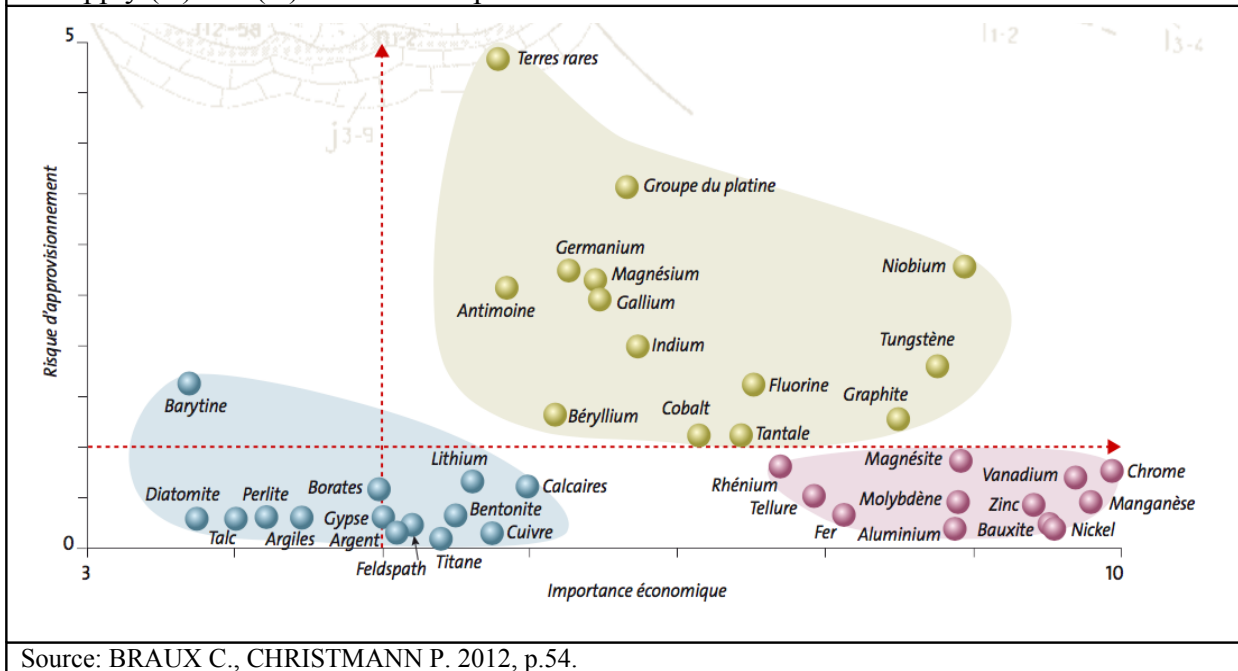
¹⁵⁹ *Ibidem*.

¹⁶⁰ The Waste Framework Directive 2008/98/EC of June 2008 and others like: "Directive 2002/96/EC on Waste electrical and electronic equipment (WEEE); Directive 2000/53/EC on end-of-life vehicles; Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators; Directive 94/62/EC on packaging and packaging waste, Directive 2006/12/EC on waste".
Cf. COM(2008) 699, p.11.

¹⁶¹ *Ivi*, p.12.

¹⁶² *Ivi*, p.13.

Figure 3. Mineral raw materials critical to the EU economy: the relationship between the risk of supply (Y) and (X) economic importance.



Source: BRAUX C., CHRISTMANN P. 2012, p.54.

1.3.2.1. Risk factors for the EU minerals supply chain

Today only China accounts for thirty percent of raw material global demand¹⁶³. On the other hand, Europe is heavily dependent on the import of raw materials and fossil fuels. This dependence on imports will even grow in the future, according to the European Social and Economic Committee (EESC)¹⁶⁴. As we have already mentioned, prices will also be subject to sudden changes and fluctuations, due to increased demand, mainly from emerging countries. However, price evolution is also linked to development and technological advancement, as it has in the past proven to be a key factor in this process¹⁶⁵. In this sense we can imagine that Europe could play with a slight advantage over the rest of the world. It is indeed a continent with a high rate of technological development, research and innovation. This fact makes us infer that the EU will be able to cope with prices fluctuations more effectively than other countries. However, at the same time, we must not forget that even other countries gradually improve their technological preparation.

Already in 1975 the EC noted in a paper that the degree of the EU's dependence on imports of metallic raw materials from non-EU countries ranged between 70 and 100%. These percentages have surged in recent years, despite the fact that measures have been taken to contain consumption

¹⁶³ TIESS G. 2011, p.110.

¹⁶⁴ *Ibidem*.

¹⁶⁵ *Ivi*, p.112.

and roll-out recycling. This is demonstrated by the increase in dependence of two minerals that are particularly salient to this thesis, tin and tungsten:

Table 1. The increase dependence of Tin and Tungsten.				
	1979/80	1988	1998	2006
Tin	93	77	100	100
Tungsten	78	75	84	>85
Source: TIESS G. 2011, p.121.				

Furthermore, the EU depends on an increasingly reduced number of supplier countries. This is a risk, especially in case any of these countries incur situations of political instability or even provoke political problems¹⁶⁶. Insecurity in certain regions of the world where raw material are extracted is a fact. We observe that more than 50% of "metallic raw materials produced worldwide come from politically unstable regions"¹⁶⁷. Additionally, "for some metallic raw materials almost all of the global production comes from politically unstable countries": this instability includes the risk of civil war and the presence of authoritarian governments, which could, for example, cause the nationalisation of the resources at any time¹⁶⁸. Protectionist measures could lead to political crises between countries and so they represent a considerable risk. These measures could also be aimed at protecting the economies of the producing countries, but also to reserve for them the exclusive use of their resources¹⁶⁹. This second case would be more likely in large producing countries with a large population and an important increase in consumption.

Instability or conflict can also prevent access to areas of extraction, for example if security deteriorates or if the roads are damaged. Companies in general are afraid to invest in unstable areas of the planet and tend to retreat from them in case of tensions and crises. Political and military crisis could also damage relationships between countries for a long time and seriously affect the supply chain. It is precisely for this and other reasons which we will examine later, that the EU wanted to develop its initiative on raw materials. Already in 2002 the European Conference on Mineral Planning has recognised "a general deficit in public awareness regarding the importance of raw materials for every individual, the society and national economy"¹⁷⁰. This has resulted in the will and the interest to converge and attempt to unify existing EU MSs laws on the subject. It follows a real European mineral policy, part of the EU's economic policy which aims to increase the GDP of

¹⁶⁶ *Ivi*, p.118.

¹⁶⁷ *Ivi*, pp.127-129.

¹⁶⁸ *Ivi*, pp.132-133.

¹⁶⁹ *Ivi*, p.127.

¹⁷⁰ *Ivi*, p.414.

MSs by regulating the market.

We can, therefore, say that the EC's initiative on raw materials was undertaken in November 2008 for several reasons. First of all it was taken to try to ensure the supply chain to companies operating in the MSs, as there are many risk factors. An article written by Braux and Christmann shows us clearly the various risk factors¹⁷¹. These risk factors can be political, economical, social, technical or institutional.

Among the major institutional and political risks, the following are the most important: the absence or the sudden change of the state; the discretionary power or authoritarianism of the state on granting permits for research or exploitation of resources; the lack of laws that could affect the mining activity in a third state (environmental laws, labor rules, tax law, etc.); the weakness of institutions and the public administration officers' inability, caused by a lack of skills, to support the mining industry; the inability of the State to negotiate fairly with the mining industry; poor governance, lack of transparency and corruption; barriers implementation restricting the export of the production (tariff or others barriers); lack of or difficulty to access public data and geo-scientific knowledge. Secondly, infrastructure constitutes another major risk factor, caused for instance by the inadequacy of roads and the transport network in general; or the lack of other services such as water or electricity. In the third group of risk factors we find the economic risk, caused by volatile prices of raw materials; technical and/or economic mismanagement by industrial operators, intermediaries or other local partners; tariff and non-tariff barriers affecting the market commodities; abuse of market dominance; conditions of access and high cost of essential capital to the industrial project; poor return on investment; high insurance costs and other costs claimed by the state (which are often not predictable). The fourth group of risks factors concerns technical risks, which is caused, among other examples, by low investments in mineral exploration; lack of technical expertise for the mineral industry; wrong estimation of the geometry of the deposit and the distribution of grades; risks related to the stability of land affected by mining, because of water coming; risk of pollution of air, water and soil; rapid changes in demand (rapid obsolescence or development of a technology and changes in regulations). Finally, we find the numerous risks that can be represented by the societies in which the mining activity is carried out: in various locations and for various reasons, opposition to the development of the mining industry can be manifested in different forms¹⁷².

¹⁷¹ BRAUX C., CHRISTMANN P. 2012, pp.48-55.

¹⁷² *Ivi*, p.49.

All or part of the risks listed above can have a direct or indirect effect on individuals, as well as on corporations or on states. As a result of these risks, the supply of minerals in the market could suffer various setbacks, creating problems to the production and then float the prices. The daily lives of millions of frenetic consumers living in wealthy countries would be difficult to organise if, for example, there was uncertainty surrounding access or ability to purchase a laptop or a smartphone. Furthermore, the price of these products could widely fluctuate from day to day. If prices were to frequently change, this would pose considerable production problems to entrepreneurs. Alternatively, if a company's stock suffered a shortage or a lack of raw materials necessary for production, this could cause critical situations and potentially lead to bankruptcies.

We must remember that the presence of raw materials in a country can be used by the government as a bargaining tool to leverage power and establish the country's influence in global competition¹⁷³. These are some of the reasons why the EU has considered it important to legislate. The aim was to try to regulate the trade of minerals that concerns many European companies: it is therefore a question of protecting capital, workers and consumers of EU MSs.

1.3.2.2. Main challenges expected by the first initiative

The EC has therefore wanted to launch the initiative on raw materials in order to equip the EU with a policy on this subject. The consultations on the Raw Material Initiative of 2008 at the EP have highlighted the following points: "the decrease of competitiveness of the mining industry in Europe"; "the termination of the mining sponsorship and reduction of raw material research policy"; "a deficient mineral planning policy"; "a heterogeneous database"¹⁷⁴.

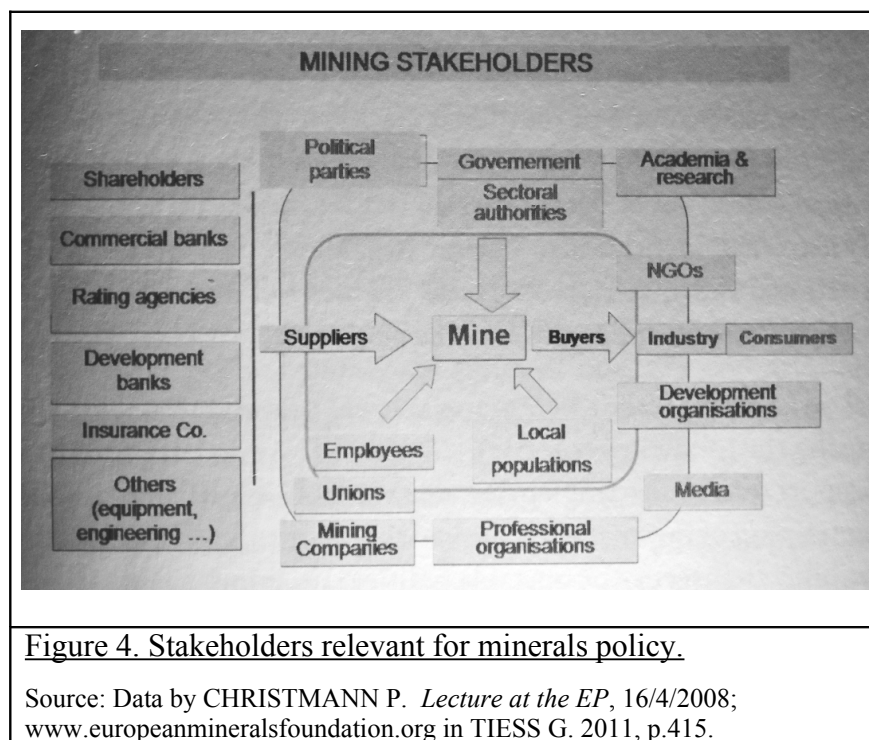
Five important challenges are expected from the DG Enterprise which is responsible for the launch of online first stakeholder consultations: "improving supply with raw materials from domestic deposits on sustainable basis; securing sustainable and transparent supply from third countries; encouraging capacity building in third countries; improving efficiency in the use of resources; establishing an adequate EU knowledge base on raw materials. The evaluation of the consultation process confirms feedback from 240 stakeholders, i.e. 172 organisations and 68 individual persons from the public and private sector. 24 of the 27 EU countries participated. Challenge 1 and challenge 5 were given first priority; and then challenge 4, challenge 2 and challenge 3 were given

¹⁷³ *Ivi*, p.48.

¹⁷⁴ TIESS G. 2011, p.415.

normal priority"¹⁷⁵.

In figure 4 below, we can clearly identify the stakeholders that revolve around the mineral policy. Although this figure might not be strictly representative of our case study, this is still clear enough for us to understand some concepts. This figure demonstrates the complexity of the issue. An important consideration is that there are many actors who gravitate around the legislative initiatives on minerals. Among these the most relevant to our study are NGOs, governments and local populations. NGOs are involved in monitoring the situation on the ground, also because sometimes they have other ongoing projects on the field which they want to protect. Many of them are engaged in lobbying and advocacy activities: they seek to change the legislative text by pointing and claiming their positions. Governments on the other hand work on law approval. In our specific case study, the government we refer to is the EU, and more specifically the EP and EC. The government is responsible for mediating and making decisions. It is in the midst of various pressures coming from suppliers, NGOs, other governments, media, academia, consumers, and populations. The third type of actor that gravitates around the legislative initiatives on minerals is local populations. Expressing themselves through local organisations, they are in contact, communicate and work with various INGOs.



¹⁷⁵ Ivi, p.457.

These relations will later be tested in our study. During the interviews we conducted, during the field study, we noticed how INGOs are connected to local organisations to get information of various kinds. The great strengths of local organisations are many. Just to make some examples we can point out: the ability to access the information in the most remote and inaccessible areas; to be able to find information in local languages so they can really relate with all the local people; to be able to act through staff who were born and lived on the spot, so s/he knows all the features and details; to have relations and contacts with other local organisations, as well as with the political authorities and with the major economic powers; etc.

1.4. Green economy and natural resources

It is also important to stress that we are living in a moment of transition to a so-called green economy. This economic activity and the sustainable development connected concept, was universally undertaken as of 2015 with the signing of the Paris Agreements on the climate. In the specific case of the EU, following the '2020 climate and energy package', the Member States (MSs) committed themselves already in 2007 to use at least 20% of renewable energy by the year 2020¹⁷⁶. According to the agreements, in order to be able to reduce greenhouse gas emissions, it is necessary to develop and install a whole series of new technologies. The electronics; aerospace, military, aeronautics, automobile industry, etc. need a massive access to resources of the subsoil in order to produce new and 'clean' technologies. However, it must be emphasised that the extraction of resources is one of the major causes of pollution of the planet because this activity pollutes the water, the area and the soil¹⁷⁷. In addition, mining often requires deforestation of large areas of the territory. Many chemical substances are used to extract resources from the subsoil and large amounts of water are used throughout the process. The green economy should therefore be considered as polluting at least as the economy based on fossil fuels. As we will analyse, the production of many of the new tools of the green economy (electric cars, photovoltaic panels, wind turbines, etc.), requires a large amount of raw material, including minerals. Their extraction certainly has an impact on the environment, especially if we consider that the mining industry is one of the largest producers of carbon dioxide on a global level¹⁷⁸.

While emissions from mining cause multiple environmental problems due to the demand of the

¹⁷⁶ Cf. EU *Climate strategies & targets, 2020 climate & energy package*; www.ec.europa.eu.

¹⁷⁷ PITRON G. *La guerra dei metalli rari: il lato oscuro della transizione energetica e digitale*, Luiss University Press, 2019, p.63.

¹⁷⁸ *Ivi*, pp.90-92.

green economy, they are not the only source of industry specific pollution. In fact, the growth in the consumption of products with high metal content, causes an additional problem, namely their disposal at the end of their use. Currently, only a small part of the metals are recycled. This is partly because not enough materials are collected to make recycling convenient. Another reason is that some products, such as photovoltaic panels, wind turbines, electric cars or smartphones, are the result of the assembly of numerous minerals and therefore recycling is particularly complicated¹⁷⁹. The result of a UN study, based on 60 metals, concludes that in 2011, the recycling rate was desperately low. Of the 60 materials analysed, only 20 exceeded the 50% recycling rate. As many as 34 materials did not reach a 1% recycling rate¹⁸⁰. This data demonstrates that, at least for the time being in order to produce the new 'green' technologies, it is necessary to continue extracting. Furthermore, the problem arises of storing obsolete materials, which inevitably flow into landfills. However, considering the growing imbalance between supply and demand, it is credible to think that the recycling of many metals will increase. Currently, however, massive extraction of resources continues.

Nevertheless it is known that resources are exhaustible and, in addition, they are not equally distributed on the Earth. On the other hand, they are of general interest because they concern directly or indirectly the entire population of the world. In particular "non-renewable mineral resources play a dominant role in 81 countries that collectively account for a quarter of world Gross Domestic Product (GDP), half of the world's population, and nearly 70% of those in extreme poverty. As a result, a growing number of low-income countries focus on resource extraction and processing activities as fundamental to their economic growth plans"¹⁸¹. The effects of global competition for research and exploitation of new resources can be major in economically and politically more unstable countries. We will explore this in greater detail later, with a particular emphasis on how the exploitation of minerals is strictly connected to the governance of a country. For our case study, we will focus on the DRC. Of course, we will also see what NGOs do to improve the governance of natural resources in a country closely dependent on this economy. Furthermore, we will seek to understand how in this country, which suffers from the lack of economical and political stability, the illegal exploitation from neighbouring countries is a common practice. States close to the DRC illegally steal resources, claiming instead that they come from their mines. Then they sell them in Asia, where they are transformed and incorporated into the daily

¹⁷⁹ Ivi, pp.86-87.

¹⁸⁰ UN Environment Programme, *Recycling Rates of Metals, A status Report*, 2011.

¹⁸¹ ARROBAS D. L. et al. *The growing role of minerals and metals for a low carbon future*, Washington DC, World Bank Group, 2017, p.26.

consumer products of billions of people. In particular, in the economies in transition towards the green economy, the demand for these products is particularly high.

Controlling production, trade and resource exploitation is extremely important for the strategy of the major world economies, primarily the EU, China and the USA, because it allows for action on several fronts, for example: meeting the growing demand of businesses and consumers; cope with climate change; manage the conflicts that may arise; be more effective in development assistance, especially in countries affected by resource conflicts. We will then focus first on the aspects that concern the role of natural resources, especially minerals, in the development of conflicts.

1.4.1. Plans for a green economy increasing the demand for minerals

Before going further, let us now reaffirm some fundamental concepts that we have developed before we focus on the few minerals connected to the EU Conflict Minerals Regulation and analysed by this thesis. Our societies and our living standards are based on minerals. These are "naturally occurring substances that have distinctive chemical and physical properties. (...) There are more than 4,500 recognised minerals; some are very common whereas others are uncommon"¹⁸². Over time humans have learned to employ these minerals in different ways, with the aim to improve their lives. If we observe the objects we have around us, all of them are full of mineral components. Inside buildings, in the roads, on transports, in the technologies we use to communicate. In our house or in the office where we work, a wide range of minerals contribute to our well-being and allow us to perform many actions.

Today the demand for a wide range of minerals is growing: this is due to the fact that societies are becoming more complex, and the world population continues to grow, producing a massive consumption of minerals. Metals in particular are essential to sustain our everyday life: "transport (aluminium for strength and lightness, zinc for corrosion protection, nickel & chromium for stainless steel) - constructions (zinc, copper, lead) - electronics, domestic, consumer goods (computers, mobile phones) - packaging (aluminium and tin to keep food fresh, protect it from light & air, heat it rapidly) - energy (silver and copper conduct electricity; batteries - lead, lithium-ion, nickel-cadmium; solar cells - aluminium, silicon, cadmium, copper, indium - there is no renewable energy without non-ferrous metals) - health & medicine (essential trace elements include zinc,

¹⁸² MINERAL RESOURCES EXPERT GROUP *Minerals in your life*, EcoGeoSurveys, Brussels, 2014, p.14.

copper, manganese; lead screens protect from X-rays)"¹⁸³. Additionally, international commitments to combat climate change, which were translated into national laws, can be honoured only by using a wide range of minerals. Paradoxically the switch to a green renewable economy creates a growing demand for energy supply. A clear example is the great shift toward electric cars. This will demand a huge amount of minerals, especially for storing energy in increasingly powerful and effective batteries¹⁸⁴. In fact "in every car there are over 15,000 components made from minerals"¹⁸⁵.

However, car production is not the only sector in which minerals are highly demanded. Other leading 'green' technologies require a great use of minerals. This is the case for wind turbines and photovoltaic cells: "high-tech metals (e.g. REE, Platinum Group Metals, niobium, lithium, cobalt, indium, vanadium, tellurium, selenium) that were derived or refined from minerals, which Europe is strongly import dependent on"¹⁸⁶. Another impressive example concerns the explosion in the use of smartphones. These new tools have attracted billions of consumers around the world. To build a smartphone, many different minerals are needed. Moreover, these phones usually have a short life, which causes consumers to change them regularly. Due to the fact that old phones are not often recycled, new minerals are then required to produce new ones.

So mineral consumption is growing and the EU is more and more dependent on minerals import. But what minerals in particular have created the need for new legislation? What are the most difficult minerals to find on the market? Has the demand for these minerals increased exponentially in recent years? What kind of minerals have created the need for a new legislation aimed at diminishing the conflicts related to their exploitation? How are they composed and what function do these minerals have? These questions and dynamics surrounding the impact and relationship between minerals and the need for regulation will be our focus in the next part of this thesis.

1.5. 3TG minerals

Any serious process towards a green economy can only be achieved by, among other things, taking a series of measures aimed at preventing climate change. As we have seen, for the development of a green economy, it is necessary to implement the use of certain minerals. For example, in the construction of electric cars, which in the near future will be sold in huge numbers around the

¹⁸³ *Ivi*, p.10.

¹⁸⁴ PITRON G. 2019, p.71.

¹⁸⁵ MINERAL RESOURCES EXPERT GROUP 2014, p.18.

¹⁸⁶ *Ibidem*.

globe, many materials are needed. Among these there are the 3TG minerals, namely: tantalum, tin, tungsten and gold. Before we explore these minerals in greater detail, let us observe briefly in the image below how they are used in building a car:

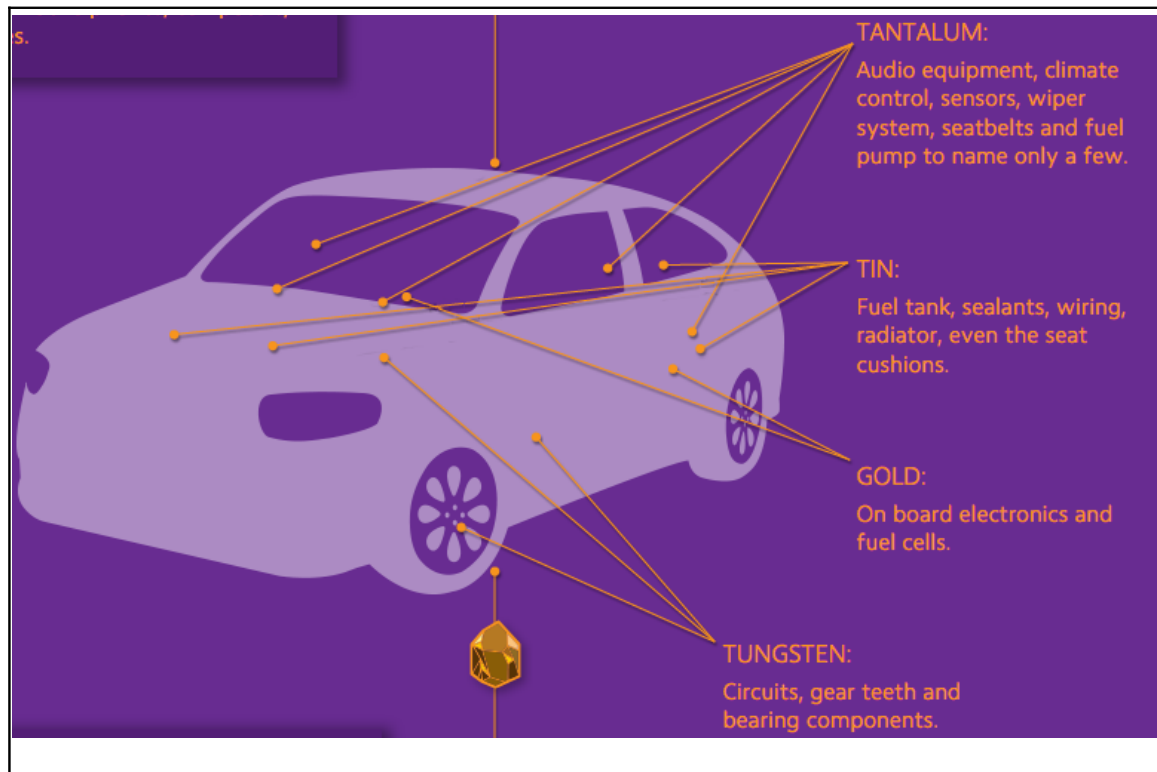


Figure 5. 3TG in a car.

Source: AIAG (Automotive Industry Action Group) *The Auto Industry And Conflict Minerals: Driving Supply Chain Responsibility*; www.conflictminerals.aiag.org; accessed on 8/11/2017.

It is perhaps surprising the diversity of minerals present in cars and other everyday items. Now let us look closer at the minerals themselves. The 3TG acronym was introduced in 2010 by the US Dodd Frank Act. It refers to the minerals that are referenced by that law, namely: gold, columbite-tantalite, cassiterite, wolframite and their derivatives: tungsten, tin and tantalum. We then try to understand a bit more about the history of these minerals, how they are composed, what they are used for, in which countries are mainly extracted and what their market value is.

1.5.1. Tungsten

The tungsten is a heavy, hard, dense, white to gray-steel metal which could be found in many minerals such as the wolframite and the scheelite. It is one of the metals with the highest melting point (3,420°). Normally the use of the name 'wolfram' is more relevant when tungsten is associated with other elements, thus giving rise to various compounds. It has excellent corrosion resistance;

most mineral acids only weaken it. It can be added to the steel, thus greatly increasing its hardness. It is very wear-resistant and is used in the processing of other metals, mining, petroleum and construction (including the use in cutting and drilling tools)¹⁸⁷. It is widely used in electrical applications and its compounds are used in manufacturing. The most common example of its use is in the production of filaments of incandescent lamps but its alloys are also widely used in the aerospace industry, automotive, sport and telecommunications applications (microchip and liquid crystals displays). It is also well-known for medical use inside X-ray tubes in the radiation-shielding¹⁸⁸. In our everyday life we use tungsten, for example: when we receive a call on our mobile phone ("vibration alert, caused by an unbalanced-mass motor made of tungsten heavy metal"); when we use the rear window heating in the car; "writing with ballpoint pens using tungsten carbide balls"; when the dentist uses tungsten based tools for dental drilling; during an "X-ray examination with tungsten components in the X-ray tube and protective aprons"¹⁸⁹. The largest tungsten ore deposits are located in China, Korea, Thailand, Myanmar, Japan, Canada, Peru, USA, Bolivia, France, Austria, Russia, Portugal and Turkey. However, the reality is that "China produces more than 80% of the world mine production and ranks also first in the world in terms of tungsten reserves (about 85%)"¹⁹⁰. The recycling rate is pretty high: 30% of the total world supply and up to 40% in some countries like USA.



Figure 6. Tungsten Ore Price (2005-2017).

Source: Mining Markets & Investment; www.infomine.com; accessed on 4/11/2017.

¹⁸⁷ *Ivi*, pp.68-70.

¹⁸⁸ *Ivi*, pp.69-70.

¹⁸⁹ *Ivi*, p.70.

¹⁹⁰ ARVANITIDIS N. *From Geology to Mineral Resources. Raw materials supply : a bottleneck in the transition to a low carbon energy system*, EuroScience Open Forum, Copenhagen, 2014, p.14.

1.5.2. Tin

Tin is one of the best-known metals used heavily since the Bronze Age. "Ordinary tin is a silvery-white metal" obtained from the mineral cassiterite, the main ore of tin¹⁹¹. In nature, tin is never found as a pure element, but always as cassiterite (tin oxide) or stannite and teallite. The tin does not easily oxidise to air and resists corrosion: for this reason, it is used in many alloys as well as to cover other metals which are more vulnerable to corrosion. It has a highly crystalline structure. Tin is a super conductor: solid mercury is the only other mineral that is better than tin in this sense¹⁹². Its use has increased considerably during the 20th century, since it was massively used for storing food¹⁹³. Today it is widely used although it is quite rare, because it possesses remarkable properties: it is the softest metal after lead; it is malleable and ductile; its chemical resistance is high; it is non-toxic; it melts at low temperatures (about 232°); also it looks nice without requiring any finishing touches.

Since it was discovered, it has mainly been used with copper to produce bronze (3000 BC). In its purest version, "tin is used in the production of electronic valves, and in the production of recipients for distilled water, beer and carbonated drinks"¹⁹⁴. In addition to being used to produce more solid alloys, tin is widely used in industrial production processes, for example: it can be used as an electrically conductive coating; in the manufacture of glass, so as to obtain flat surfaces; it is used in welds to join copper and lead pipes, in electronic circuits and capacitors (when tin contains lead, barium, calcium and copper); in various chemical processes, pharmaceutical or chemical solutions¹⁹⁵; in the manufacture of antifouling paints, to prevent the proliferation of algae; tin monoxide is employed in the production of tin salts which are indispensable for electroplating and as chemical reagents. Other "products containing tungsten are: appliances, lighting, phones, computers, jewellery, crafts, sports & fitness equipment and power tools"¹⁹⁶. Furthermore, this material will be in high demand in the coming years for use in electric vehicles, renewable energy and cloud storage backups: in particular it is useful to increase the energy efficiency of batteries¹⁹⁷.

¹⁹¹ Cf. www.webelements.com/tin; accessed on 6/11/2017.

¹⁹² EVANS C. J. *Industrial uses of tin chemicals*, In: Chemistry of tin, Springer Netherlands, 1998, pp.442-479.

¹⁹³ GEOGHEGAN T. *The story of how the tin can nearly wasn't*, BBC News Magazine, April 2013.

¹⁹⁴ BARUME B., NAEHER U., RUPPEN D., SCHÜTTE P. *Conflict minerals (3TG): mining production, applications and recycling*, Current Opinion in Green and Sustainable Chemistry, 1, 2016, p.10.

¹⁹⁵ KARPEL S. *Tin and its Uses*, International Tin Research Institute, 1988, pp.1-3.

¹⁹⁶ BARUME B. et al. 2016, p.11.

¹⁹⁷ *Ivi*, p.10.

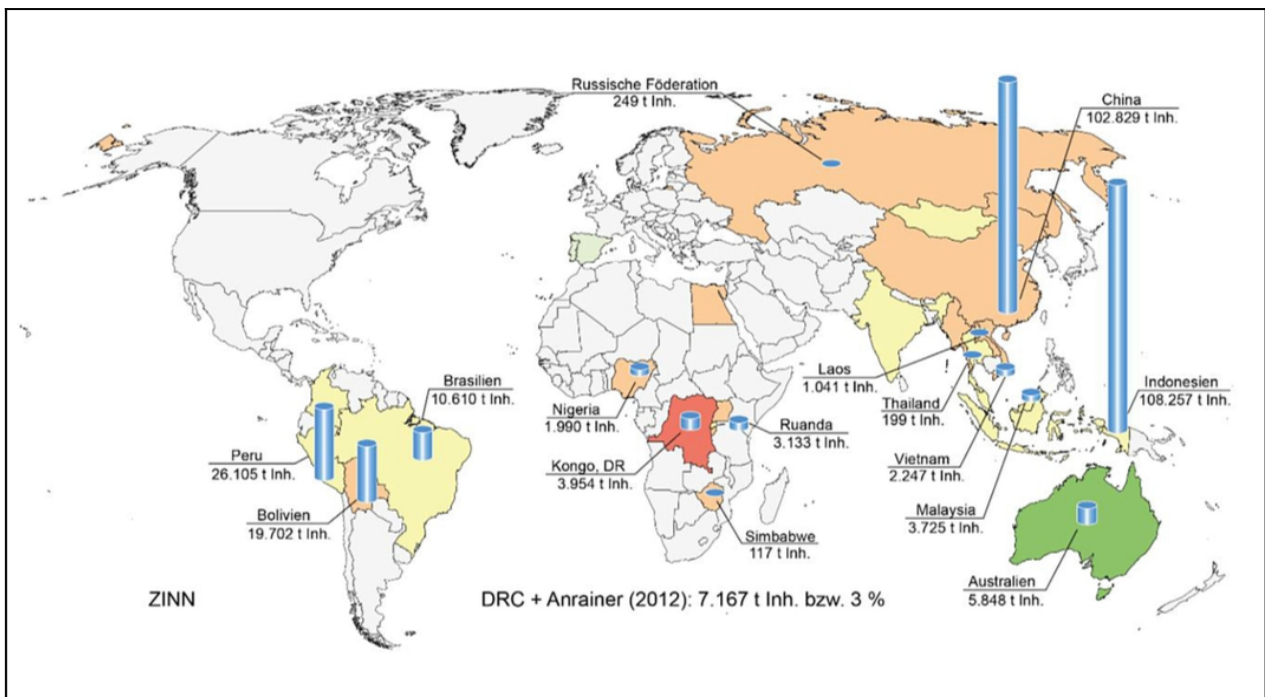
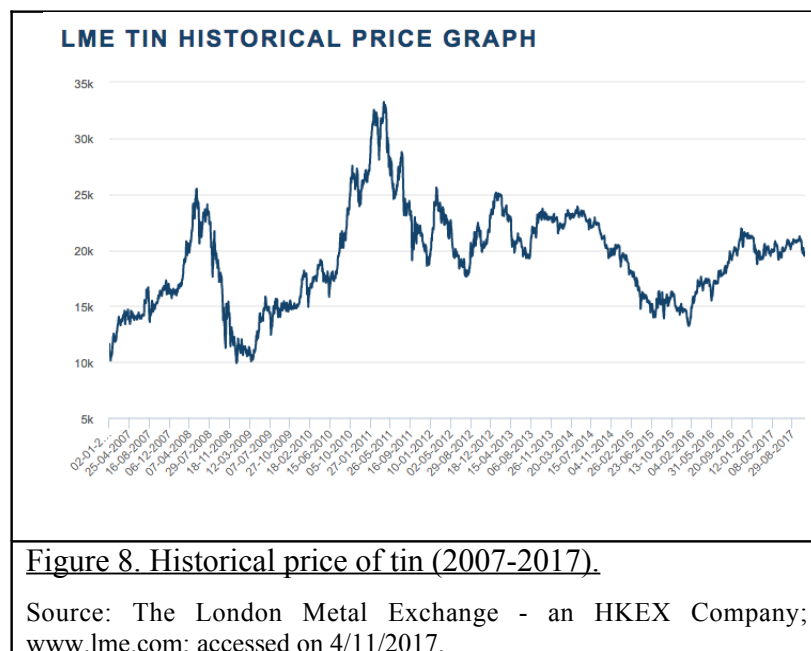


Figure 7. Tin mine production in 2012.

Source: BARUME B. et al. 2016, p.10.

The main world producers for tin are Indonesia, China, Burma, Brazil, Bolivia, Peru, Australia, Malaysia and the RDC¹⁹⁸. Today the global consumption of refined tin is around 344,000 tonnes; recycling "of primary tin and secondary alloys plus drosses proportional to total global tin use was at 33% in 2014"¹⁹⁹.

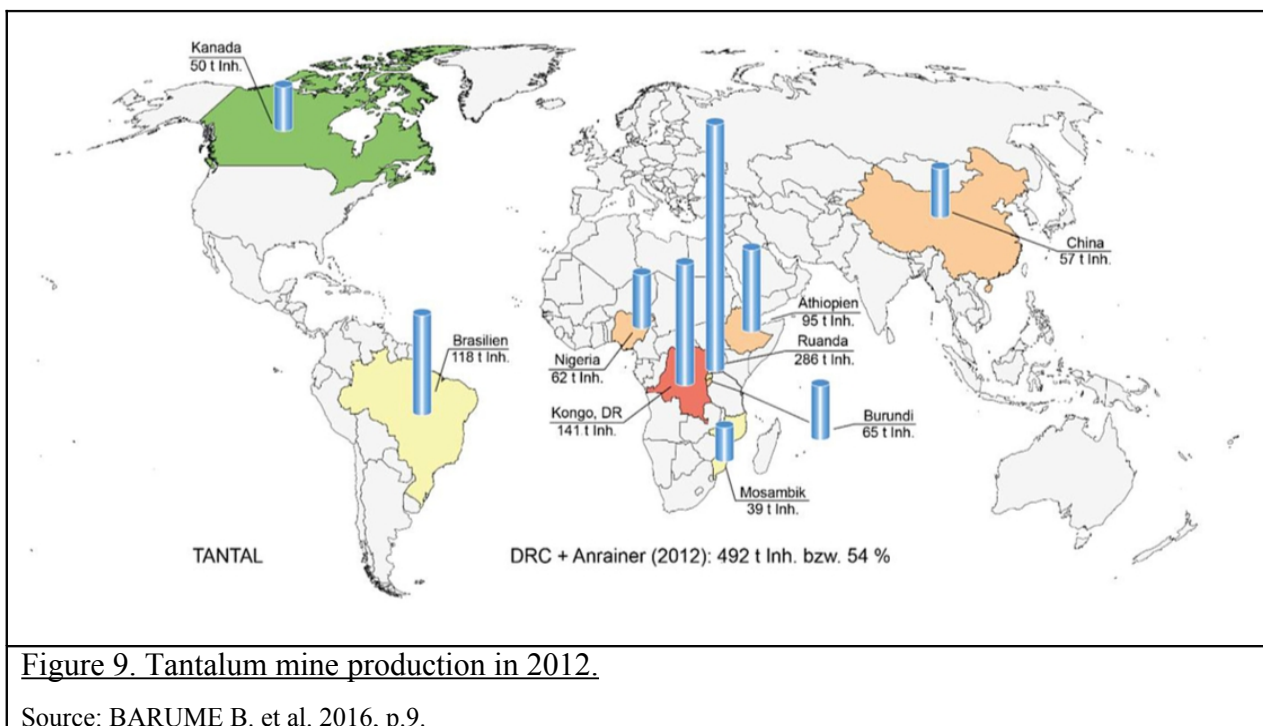


¹⁹⁸ U.S. GEOLOGICAL SURVEY *Mineral Commodity Summaries*, TIN (Data in metric tons of tin content unless otherwise noted), 2017, p.175.

¹⁹⁹ This was the production in 2015.
Cf. BARUME B. et al. 2016, p.10.

1.5.3. Tantalum (Coltan)

We will now review the last mineral evaluated by the EU regulation. This is undoubtedly one of the most valuable and known minerals of recent years: the columbite-tantalite. Coltan is a mix of different elements, of columbium and tantalum ore concentrates, which together are commonly known as coltan. This mix of more than 50 different concentrate minerals is "composed of members of the columbite-tantalite group. Tantalum is a rare metal (Dec 2007: 77 USD/kg tantalite) with strong, chemical and electronic properties which make it valuable in many high-technology and medical applications"²⁰⁰.



This dull black metallic ore is responsible for the reduction of the size of mobile phones in the last years. Tantalum is not important only in the production of mobile phones, but in every kind of electronic device which makes use of tantalum electrolytic capacitors. After being refined, tantalum generates four different products of high commercial value: tantalum powder which "is used in the fabrication of capacitors for electronic circuits in automotive components such as ABS, airbag activation modules, GPS, in consumer electronics e.g. laptops, mobile phones, DVDs, flat screen TVs, etc; tantalum oxide is used in digital cameras, X-Ray film and inkjet printers; the tantalum metal is used in chemical processing, medical devices, and alloys. The latter are also superalloys

²⁰⁰ SGA NEWS *Fingerprinting of conflict minerals: columbite-tantalite ("coltan") ores*, Society for geology applied to mineral deposits, Number 23, June 2008, p.1.

and are used in aerospace and land-based gas turbines; tantalum carbide is primarily used in cutting tools"²⁰¹. The price of tantalite has been very variable during last few years (figure 11). Generally speaking it has grown, becoming a highly profitable business.



Officially 80% of the world production of tantalum is based in Australia, Canada and Brazil. The reality is that artisanal and small-scale mining productions are responsible for satisfying the growing demand. It seems that Africa currently hosts "about three quarters of the world's tantalum resources" mainly located in the DRC, Nigeria, Namibia, Mozambique and Ethiopia²⁰². Many statistics, magazines and articles also add Rwanda among the countries with most coltan reserves. Rwanda, with the support of a European company, is building a mineral refining factory²⁰³. It will refine up to 60 tons of tantalum every month. It is a 16 million USD investment, unique in its kind for the African continent. In 2015, Rwanda was the world's second largest exporter of coltan after Brazil, securing 37% of the world supplies. Revenues of 600 million USD or more will be expected in the next five years from this refinery²⁰⁴. Even tantalum is partially recycled: currently the

²⁰¹ BARUME B. et al. 2016, p.9.

²⁰² SGA NEWS 2008, p.1.

²⁰³ This investor, whose name is Power Resources Group, is an international company based in various European countries, including Malta, Slovenia and Macedonia. The company declares its commitment to following its supply chain. On the website we can read about corporate policies regarding respect for human rights and workers rights. In particular, the company is said to be strongly committed to ensuring that children do not work in mines. It is also said that the minerals produced do not come from conflict zones. For more information: www.prgplc.eu; accessed on 7/11/2017.

²⁰⁴ AFRICA24 TV #Rwanda : *Au cours des 12 prochains mois, le pays commencera à exporter des produits raffinés de tantale sur le marché mondial et ce, grâce à un nouvel accord pour la construction d'une usine de fabrication de 16 millions de dollars dans le pays*; www.africa24tv.com; accessed on: 6/11/2017.

recycling rate is around 16%; for the most part it is extracted from the mines (78%), while a small part comes from the treatment of tin slugs (6%)²⁰⁵.

The idea that Rwanda is a regional producer of coltan is a myth that has persisted for years and contributes directly to instability and conflict within the DRC. In fact, Rwanda has very few active mines in its small overpopulated territory. The production of coltan is actually the fruit of illegal trade. It is difficult to prove where the country's tantalum comes from, but the "total Rwandan export volumes of tantalite clearly do not all originate from Rwanda"²⁰⁶. A good part of the mineral extracted in the DRC passes from Rwanda, Burundi and Uganda crossing the borders illegally²⁰⁷. This illegal trade has continued since the war in RDC began²⁰⁸. In this way the small and overpopulated country can boast the production of this mineral, which is declared to be made in Rwanda. Sales proceeds can thus be deposited in the safest Rwandan banks. It can also be taxed more lightly than what it would be taxed in the DRC²⁰⁹. This is increasingly becoming a well-known theft in the region²¹⁰. Miners, exporters, traffickers know it well and have no problem confirming this. This fact has been reported several times to the author of this thesis by various authoritative sources. Unfortunately, however, on many other channels, including the academic channels, the myth of Rwanda's coltan production continues. This is known to be a big scam which provides a great business for a limited group of people.

²⁰⁵ BARUME B. et al. 2016, p.9.

²⁰⁶ NEST M. *Coltan*, Cambridge: Polity Press, 2011, p.19.

²⁰⁷ This method of illegal exploitation of minerals has been confirmed to the author by many sources during the field research. Among these sources are RUVUNANGIZAIN P. the director of BEST, in our interview of 9/10/2017.

²⁰⁸ NEST M. 2011, p.89.

²⁰⁹ UNSC, S/RES/843 adopted on 15/11/2012.

²¹⁰ LEZHNEV S., PRENDERGAST J. *Rwanda's Stake in Congo Understanding Interests to Achieve Peace*, The Enough Project, 2013, pp.1-11.

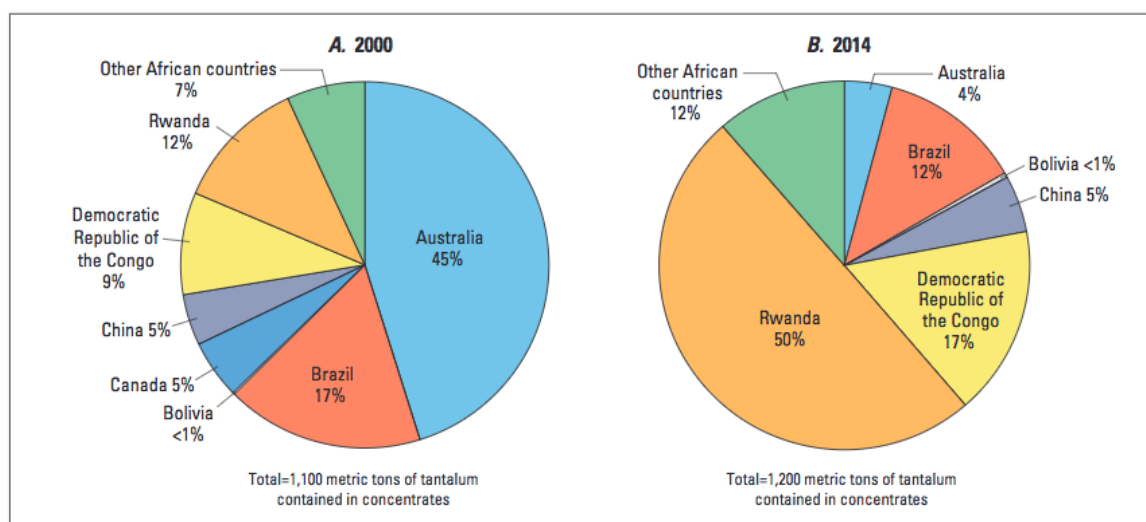


Figure 1. Mine production of tantalum contained in concentrates, by country of origin, for 2000 (A) and 2014 (B).

U.S. Department of the Interior
U.S. Geological Survey

Fact Sheet 2015–3079
December 2015

Figure 11. Mine production of tantalum contained in concentrates, by country of origin.

Source: BLEIWAS D. I., PAPP J. F., YAGER T. R., US Geological Survey, *Shift in Global Tantalum Mine Production, 2000–2014*, Fact Sheet 2015, pp.1–6.

1.5.4. Gold

Another metal considered by the EU regulation is gold. "Gold is a chemical element and a mineral at the same time"; it "can form alloys with silver, mercury and copper"²¹¹. It has been widely appreciated since prehistoric times because of its properties: its brilliant yellow colour is very attractive, which is perhaps why it has been so highly appreciated; its colour makes it easy to recognise it, also when it is in the form of tiny grains; it preserves its colour for a long time; it is resistant to corrosion; it is soft, malleable and ductile; after being slightly warmed up, it can be easily machined and transformed into tiny pieces. It is also an excellent conductor which is why there are so many uses for gold. It can be mixed with other materials to get new shiny and original colours. For example, white gold is produced if it is combined with nickel, silver or palladium. Or red or pink gold when combined with copper, or blue if combined with iron. Gold is used as a currency reserve, as it is universally recognised as a currency. In fact, banks often invest in gold because its price is considered constant over time and does not get devalued. Many national sovereign states also have gold reserves to curb inflation or deflation. Since ancient times it has been used as an ornamental object by many civilisations. Gold sheets are used as decorations in luxurious or sacred environments. It is a symbol associated with winning and athletes receive gold

²¹¹ MINERAL RESOURCES EXPERT GROUP 2014, pp.92-93.

medals when winning sport competitions. In addition, it has recently been used in the manufacture of complex technologies, including transport, communications and healthcare. Gold is used by dentists to build crowns or fake teeth. In manufacturing it is used as a conductor: it is inserted into electronic circuits within mobile phones, computers, hospitals electronics, etc. Summing up the use of gold globally, it can be divided as follows: 50-60% jewellery; 10% industrial use; 30% investment products; 5% central banks reserves²¹².

The gold recycling rate is quite high compared to other metals: in 2012 it reached 37%²¹³. The major producers of gold are: China, Australia, USA, Russia, Canada, South Africa and Ghana; they represent all together a business figure beyond 157 billion USD (in 2015), with an annual production of 3,186 tons ["85% of which approximately comes from Large Scale Mining (LSM) and 15% from Artisanal and Small Scale Mining (ASM)"]²¹⁴.



Figure 12. Historical price of gold (1973-2014).

Source: The Gold price; www.goldprice.org; accessed on 4/11/2017.

1.6. The origins of intensive mineral exploitation in eastern DRC

As we have seen, many countries are involved in the production, transformation or sale of 3TG minerals. This has contributed to the emergence of new wealth in countries such as: China, Brazil, India, Mexico, Peru, Indonesia, Malaysia, DRC, Ghana, Rwanda or Tanzania. However, in addition

²¹² BARUME B. et al. 2016, p.11.

²¹³ MINERAL RESOURCES EXPERT GROUP 2014, pp.94-95.

²¹⁴ BARUME B. et al. 2016, p.11.

to undeniable positive effects, the exploitation of these minerals has also caused enormous side effects. The most serious related problems generated from the exploitation of these minerals are: the serious violations of human rights; the emergence of medium and high intensity conflicts, the lack of workers' rights, child labour, corruption, pollution and global warming, mass displacement of whole populations, the growth of inequalities and lack of development in other economic sectors of a country.

We must remember, however, that these issues do not concern every place of extraction. Abuse and exploitation are not practices that occur wherever 3TG or other minerals are mined. There are certainly some areas in the world where these minerals have caused serious social, political, economic or environmental disruptions. Among these we have decided to use the DRC as a case study. In particular, we analysed the situation in the east of the country and in particular within the two provinces of North and South Kivu. This area of Central Africa has been observed in numerous studies. Even during the approval process of the EU Conflict Minerals Regulation, examples of the mismanagement of resources made it the focus of attention. Even in these regions, however, it should be noted that there are also virtuous examples of mining and resource exploitation. Unfortunately, a spiral of events, not always necessarily linked to resources, has caused the east of the DRC to fall into a long series of conflicts that have caused enormous damage to the region. Despite the very serious violence perpetuated in this area of the DRC over a few decades, it should be pointed out that the problem of conflict minerals does not necessarily concern the whole country or uniformly, all of the mines.

By using our interviews as a basis, we would like to analyse the conflict in the east of the DRC and the role that NGOs have had. In particular, after contextualising the relationship between conflict and natural resources, we will understand how NGOs have entered and began work in this context. Their emergence occurred in conjunction with the escalation of the conflict. In fact, many organisations have tried to intervene as civil society actors, to try to break the link between exploitation of resources and conflict. First of all, we will review quickly the main phases that led to the conflicts of the nineties. The focus is on the exploitation of minerals, which has been steadily increasing, until the outbreak of the conflict, in conjunction with the collapse of the old post colonial regime in the RDC and the war in Rwanda.

The history of the DRC is closely interconnected to many countries around the world. For historical reasons, until the end of the Belgian colonisation, the DRC was more linked to Europe. But at least

since WW2 and with the Cold War, new alliances have characterised the global geopolitical structure. The DRC is dependent on the rest of the world, which in turn needs the DRC. A striking example is the Katanga uranium, which was used to build the atomic bombs used by Americans in Hiroshima and Nagasaki in 1945²¹⁵. Since the Belgian time, the Katanga region was the most exploited for its enormous mineral deposits²¹⁶. On the other hand, the South Kivu is historically more agricultural, with the exception of the huge gold deposits that have been historically exploited²¹⁷. The exploitation in South Kivu of other minerals begins later, especially after liberalisation following the Mobutu Sese Seko regime²¹⁸.

Could economic mechanisms explain the emergence of destabilising conflicts in Central Africa? Surely we must take into account the huge interests of the MNCs working in Central Africa²¹⁹. However, other reasons must also be considered. Between them, we should underline that the mineral deposits in the DRC are huge and historically they have not been exploited. Practically they represent "billions of dollars in untapped mineral reserves"²²⁰.

After almost thirty years of consolidated rule, the change of regime, from Mobutu Sese Seko to Laurent-Désiré Kabila and then to his son Joseph, led to a new assault of the mining companies to the resources of the country²²¹. To do this, the best period was certainly in the nineties, with the explosion of conflicts and the change of political regimes. The first step for large-scale hoarding of resources was encouraged by the large international financial institutions, the IMF and the WB²²². From the age of independence, in many countries like Zaire, resources had been squandered and wasted by regimes such as Mobutu's²²³. The seventies was characterised by a series of

²¹⁵ HECHT G. *Being nuclear: Africans and the global uranium trade*, Mit Press, 2012, p.3.

²¹⁶ SÄRKKÄ T. *The Lure of Katanga Copper: Tanganyika Concessions Limited and the Anatomy of Mining and Mine Exploration 1899–1906*, South African Historical Journal, 2016, pp.318-341.

²¹⁷ GEENEN S., FAHEY D., IRAGI MUKOTANYI F. *The future of artisanal gold mining and miners under an increasing industrial presence in South Kivu and Ituri, eastern Democratic Republic of Congo*, Discussion paper, IOB, University of Antwerp, 2013, p.12.

²¹⁸ KILOSHO J., STOOP N., VERPOORTEN M. *The social minefield of gold digging in South-Kivu, DRC: The case of Kamituga*, Analysis & policy brief 10, IOB, University of Antwerp, 2015, pp.1-4.

²¹⁹ ALDEN C., DAVIES M. *A profile of the operations of Chinese multinationals in Africa*, South African journal of international affairs, 2006, pp.83-96.

²²⁰ And the reader must consider that in this article the author refers to the province of Katanga, which is instead the one that has historically been widely exploited, even in an industrial way, unlike the provinces of Kivu. MONTAGUE D. *Stolen goods: Coltan and conflict in the Democratic Republic of Congo*, Sais Review, 2002, p.110.

²²¹ BARACYETSE P. *L'enjeu géopolitique des transnationales minières au Congo*, Buzet, Christian de Beule, 1999.

²²² Scholars observe the same dynamics today.

KUDITSHINI J. T. *Global governance and local government in the Congo: the role of the IMF, World Bank, the multinationals and the political elites*, International Review of Administrative Sciences, 2008, pp.195-216.

²²³ LAWAL G. *Corruption and development in Africa: challenges for political and economic change*, Humanity and social sciences Journal, 2007, pp.1-7.

nationalisations by Mobutu and its Zaïrianisation policy²²⁴. Nationalisation concerned especially those industrial sectors linked to natural resources²²⁵. Later on, corruption and neglect of these regimes led to the growth of public debt, which, however, could not be repaid²²⁶. The large international credit institutions had been very generous until the eighties, but then returned to ask for repayments. The debts were huge and it was difficult to repay them²²⁷. Also for these reasons, from the nineties, IMF and WB increased pressure on the Congolese government to undertake unpopular decisions that would reflect their economic policies²²⁸: cutting public spending, then the services of the state, especially in the basic sectors, such as health and education; privatisation of state enterprises; devaluation of the currency, which was to be the sole competence of the state in the economy²²⁹. This moment coincides with the nineties, which were tragic for the entire Great Lakes region. In fact, privatisation represents an unprecedented opportunity for many MNCs, given the huge amount of resources in the region²³⁰. Moreover, in this period the great world financiers concentrated and consolidated on the riches of Central Africa for the huge and unexploited deposits²³¹. These resources have an impact on the whole world and certainly throughout the DRC. So the stakes were very high.

In conclusion, the origins of the intense exploitation of resources in the east of the DRC are to be found in liberalisation and political regime change, that is, the end of the reign of Mobutu. This led to the emergence of new economic and political actors. These factors coincide with the increase in the consumption of a series of minerals of which the DRC is rich. In particular, columbite-tantalites, gold, diamonds, cassiterite, wolframite, tourmaline and other rare minerals, which play a key role in the world economy, as well as in the economy of eastern DRC²³².

²²⁴ LOFFMAN R. *In the shadow of the 'Great Helmsman': Mobutu Sese Seko's life and legacy in the DR Congo*, Africa at LSE, 2017.

²²⁵ MOREAU J. L. *De la décolonisation à la zaïrianisation. Le sort des capitaux belges au Congo*, Les cahiers Irice, 2010, pp.61-77.

²²⁶ VAN REYBROUCK D. *Congo*, Feltrinelli, 2014, pp.391-464.

²²⁷ NYAMUHIRWA D. M. A., KUSHINGANINE J. B. N. *DR Congo Debt Sustainability: A Quinquennial Assessment*, International Journal of Science, Technology and Society, 2019.

²²⁸ CLARK J. F. *Socio-Political Change in the Republic of Congo: Political Dilemmas of Economic Reform*, Journal of Third World Studies, 1993, pp.52-77.

²²⁹ BARACYETSE P. *L'enjeu Géopolitique des Transnationales Minières au Congo*, Un dossier de SOS. Rwanda-Burundi, 1999, p.7.

²³⁰ FORTMEYER S. *"Why Can't I Find It?" Mining Transparency in Zambia and the Democratic Republic of Congo*, Aisthesis, 2018, pp.1-11.

²³¹ BOND P. *Looting Africa: The economics of exploitation*, Zed books, 2006.

²³² JAILLON A., MATTHYSEN K., BOUUAERT M. C. *Interactive map of artisanal mining exploitation in Eastern DR Congo-2018 Update*, IPIS.

1.6.1. Purposes of the war

The regime change in the DRC, as well as the changes for the mining industry, coincided with another series of events that characterised the region and had huge repercussions. Geopolitical changes have had very important effects especially in the Great Lakes region and therefore also in the east of the DRC, in the provinces of Kivu. As we will see later, several NGOs with which we are concerned, begin to emerge in this period, acquiring experience, visibility and legitimacy. To better frame this context, we need to review some history and contextualise it in the region in which the NGOs we have analysed, operate.

After the 1994 Rwanda war, around 1 million and 500 thousand refugees were displaced throughout the Kivu area. Most settled in the North Kivu, but a substantial part, around 700/800 thousand, settled in South Kivu. This huge displacement of populations caused a series of tensions, which served as a prelude to the first Congo war. In 1996, the Rwandan Patriotic Front (RPF) invaded Zaire with the excuse of looking for *Interahamwe Hutu* fighters, considered to be the perpetrators of the *Tutsi* genocide. Another 'cast iron alibi' was to free the country from the dictatorship of Mobutu who had cancer and was having treatment in Europe. He would succumb to the cancer in Morocco, on the 7 September 1997²³³. This period "was the beginning of a long occupation of the eastern DRC by a large number of Rwandans"²³⁴ and more generally of a long series of external interferences that have changed the Great Lakes region.

The first Congo war came after "the UN commits the mistake to not move refugees from border areas. For this reason there is a continuation of the clashes on the *Rusizi* border, from the river of the same name"²³⁵. This creates a pre-war situation. Thus begins the first Congo war, that involves: Laurent-Désiré Kabila's AFDL, allied with the Burundi, Rwanda, Angola, Uganda, *banyarwanda* and *banyamulenge*, populations considered as *Tutsi*, living in the eastern DRC; on the other side are the army of Mobutu's Zaire, Rwandan rebels partisans of *Hutu power* and some groups of mercenary soldiers from as far away as Angola. In September 1996 the AFDL invaded the DRC from the east and they conquered Bukavu, Goma, Bunia, etc.

It is not the intention of this thesis to analyse the details of the conflicts that have bloodied the DRC in recent years. Rather, we are concerned with interpreting these conflicts as changes in power to

²³³ SCHATZBERG M. G. *Beyond Mobutu: Kabila and the Congo*, Journal of Democracy, 1997, pp.70-84.

²³⁴ Interview with BORDIGNON F., Missionary, Xaverian Brothers, 22/11/2017.

²³⁵ *Ibidem*.

control natural resources, especially minerals.

"So why did this war break out? There was no need for war, because Mobutu had two tumours, one in the prostate and one in the colon. He was doomed. He had not been in the DRC for two years, when he returned he was in a wheelchair. War was not necessary to bring down the regime. It was enough to tell General Mahele to take power in the country, since he was someone he could have the control of the country at that time. But the USA no longer needed the Congolese. They were allied with Kagame, who could control the entire DRC from a small town. So talking about a war of liberation war is merely a pretext. It was a war for occupation. And indeed we are still under occupation. The number of Rwandan-owned houses in Bukavu is not counted. In addition, around 30 petrol company companies are Rwandan. The Bukavu-Goma boat companies are from Rwandans. They took over the region's economy. And in Goma even more"²³⁶.

In summary, the first or 'official' purpose of the first Congo war, was to eliminate the *Interahamwe Hutu* fighters amongst the Hutu refugees who fled Rwanda after the end of the genocide. However, "in reality they eliminated all those they found, included men, women and children"²³⁷. This is the reason why in this first war in the east of the country, between 200,000 and 400,000 mostly Rwandan refugees who had fled their country in 1994, disappeared. Other hundreds of thousands of Rwandan citizens spilled out across Africa and one substantial part became Congolese citizens. The second or 'unofficial' purpose of the war, the eastern occupation of Zaire, would allow the control of the huge mineral deposits. Even during the war, the sale of minerals and concessions by the government Kabila, continued. In addition, during the same period, demand for some of the precious or rare minerals present in this area grew considerably. This is particularly the case for columbite-tantalite, used in the construction of computers and mobile phones²³⁸. Compared to the Mobutu era, this situation seems enormously complicated. Many actors, both international and local, enter the game of conquering the resources of the DRC, as they told us in various interviews:

"It all started with the war with Rwanda in 1996 and the rise of all the nine neighbours of the DRC. The various rebellions have impacted our territory. Belgium was concerned as well. Behind the apparent actors, there are others who are hidden. South Africa, Israel both entered the market with their companies, for diamonds. Israel, along with Dan Gertler, played an important role during the war because he was a friend of the president. Some Belgian politicians have also positioned themselves around the conflict table in order to enter the mining sector. Such is the

²³⁶ *Ibidem*.

²³⁷ *Ibidem*.

²³⁸ See annex: Annual global production of industrial metals and critical minerals and metals 1980-2012.

case of Luis Michel who played his role through companies which are active in the extraction of diamonds, in Kasai. These companies have bought parts or concessions from state enterprises"²³⁹.

"In that moment, the USA were able to control the resources of the region through Kagame, Museveni and Kabila"²⁴⁰.

"In 1996 we experienced the first Congo war, for the so-called liberation of the Congolese by Kabila. James Kabarebe who arrived from Rwanda, became the chief of the Congolese armed forces and minister of defence of Rwanda. With this passage, the plunder of natural resources has become systematic and systematised, especially by Rwanda and Burundi"²⁴¹.

The huge traffic of minerals starts and companies were born everywhere. However, in July 1998, Kabila, perhaps cautious of the massive presence of foreigners accumulating for the control of minerals, has began to withdraw many of the concessions. He also needed "reliable sources of income to sustain his regime" even after the first government failures, for example hyper inflation by printing money, taxing companies more heavily, all after distributed mining concessions hastily in exchange for military alliances²⁴².

For this reason, on the 2nd of August 1998 the war started again and the Rwandan, the Ugandan and Burundian armies all occupied large parts of the eastern DRC. This was also a good excuse to get rid of Kabila. The DRC army was allied with Angolan mercenaries who blocked the Rwandans near to Kinshasa, close to the power plant of Inga. Then Chad, Namibia, Zimbabwe also entered into the conflict with Kabila. At that moment there were at least five governments in the country and fifteen armies. The war continued until at least 2003. This piece of Central African history has been related to us in several interviews, including this:

"The DRC has nine neighbours. Everyone had their interests to intervene in the war. For example Zimbabwe, Namibia and Angola came for Kasai, i.e. the export of diamonds. Uganda wanted to have a hand in Ituri, to exploit gold, wood, diamonds and coffee. Further south Rwanda benefits from stanniferous ores, coltan, wolfram and cassiterite. Other countries, such as Tanzania and Zambia, benefit indirectly through ports, airports and participation in various companies that extract or trade resources. At the time, there were already active organisations, such as Amnesty International and Global Witness, working on the illegal exploitation of

²³⁹ Interview with MUHIMA A. S. 7/12/2017.

²⁴⁰ Interview with BORDIGNON F. 22/11/2017.

²⁴¹ Interview with BAFILEMBA F. 6/12/2017.

²⁴² SAMSET I. *Conflict of interests or interests in conflict? Diamonds & war in the DRC*, Review of African Political Economy, 2002, p.473.

minerals"²⁴³.

This war for minerals is therefore closely linked to the consolidation of the power of the new kingdom of Kabila, a mixing up of the interests in the field of neighbouring countries and their supporters: "the profits made by the regime by granting the concessions suggest, all the same, that it used the war as a pretext to accelerate the excessive exploitation of Congolese resources - to be able to make short-term profits. The president therefore made himself dependent on foreign troops not only to stop the advance of the aggressors but even more to support the income which feeds his position of power"²⁴⁴.

This second Congo war (1998-2003) was fought largely in the countryside for the control of the mines, unlike the first part, which was focussed mainly in the cities. Everyone found what they were looking for: oil, mines of gold, diamonds, etc. however, at the same time, paradoxically, military engagement had a high cost and required large amounts of funding. In order to pay for the war on resources: "Rwanda, Uganda, Zimbabwe and the DRC government all succeeded in their attempts to use diamonds as a means to finance the war. The degree to which diamonds in particular and DRC natural resources in general, have perpetuated military activities is still variable"²⁴⁵.

1.6.2. NGOs emerge after the conflict

One important concern for us, which we will explore through our interviews, is how the NGOs present in the east of the DRC began the work of documenting the conflict, making it known to the world. They later specialised in a number of different activities. Many of these NGOs also participated in lobbying the European institutions. Their long experience and the activities that we have documented are also a sign of credibility and legitimacy of these organisations.

As we have already seen, systematic looting of resources has been widely documented, in part by NGOs. In this interview we highlight how some of the NGOs interviewed were already working on the documentation of war events:

"We started from the post-war situation, which was characterised by insecurity and which was very chaotic. The war had been qualified as an ethnic war but subsequently we demonstrated, with other CSOs, that we

²⁴³ Interview with MUHIMA A. S. 7/12/2017.

²⁴⁴ SAMSET I. 2002, p. 464.

²⁴⁵ *Ivi*, p. 475.

are not experiencing an ethnic war but rather an economic war. The armed groups presented are the actors who are controlled by the politicians of the countries of the sub-region. Anyone who does not want to guarantee a security situation in our area is responsible for fuelling the conflict and taking advantage of the resources. The truth is striking: communities continue to live in poverty, in misery, while their natural resources are leaving. They leave under their eyes fraudulently, illegally, all except for a small percentage which is marketed legally"²⁴⁶.

"In 2000 there was the UN panel report. This report extensively documents how Uganda and Rwanda funded their armies, with more than eighty percent from stolen resources. We have contributed to these reports and we have used them to advocate against the Congolese government by filing complaints with the governments of neighbouring countries. This was done at the international tribunal and in September 2005 the Congolese government had a judicial victory. The international court ruled that it was Uganda who was guilty of economic crimes, war crimes and crimes against humanity"²⁴⁷.

However, "in its October 2002 report, the panel took the initiative of naming and shaming the international corporations that were indirectly benefiting from the exploitation of resources, since they were part of the financing and marketing chain (banks receiving payments, transport companies delivering the minerals, multinational corporations buying DRC's minerals, etc.) that facilitated the illegal exploitation"²⁴⁸.

The UN panel report has received much criticism, critics pointing to a lack of evidence or accusations that the report would be politicised or exploited in some way by French interests. Its recommendations, therefore, have not been widely followed but it has had some effects. The report almost exclusively accused Rwanda and Uganda, but largely ignored those who took advantage and fuelled this economic war for the control of mineral resources, such as Burundi, Zimbabwe, Angola, Zambia, Tanzania etc. It remarked that those who invested in this war, exploiting resources and engaging militarily, had significant advantages: the families of the various presidents then in office, from Kabila to Mugabe, were greatly enriched; Uganda and Rwanda have largely financed their army, increased exports, gained the trust of international investors and also that of some geopolitical analysts. However, the panel gained legitimacy because it also initiated a series of research projects, analyses and publications that proved that the exploitation of resources in Central Africa was

²⁴⁶ Interview with FURAHA F. 11/12/2017.

²⁴⁷ Interview with BAFILEMBA F. 6/12/2017.

²⁴⁸ GRIGNON F. *International Response to the Illegal Exploitation of Resources in the DRC*, Challenges of Peace Implementation, The UN Mission in the Democratic Republic of the Congo, Johannesburg, Pretoria: Institute for Security Studies (ISS), 2004, p.48.

responsible for the conflict and its perpetuation²⁴⁹. Overall, "the publication of the first panel report, however imperfect, had also created a chain reaction of international NGO research and documentation of Rwanda and Uganda's exploitation of resources, which helped keep the issue of exploitation of resources in the DRC on the international agenda"²⁵⁰.

NGOs have long maintained that the war in the region was due to the exploitation of minerals and geopolitical changes. This consistency and momentum helped to increase their legitimacy in the actions they then took on lobbying and in other activities. In one particular interview it was made clear to us in simple terms how the consumption of minerals has fuelled the conflict:

"The fighting and the crimes in this region are due to the exploitation of minerals. With minerals, companies finance the armed groups responsible for wars. Who endures and suffers from these wars? The people... And meanwhile the companies are supplying their factories to serve interests and consumption in Europe"²⁵¹.

From these tragic events, which led to a self-sustaining conflict, the activities of many NGOs emerged in the region, which over time earned them visibility and ultimately, through their work, legitimacy.

1.6.3. NGOs draw attention to eastern DRC

The work of many Congolese NGOs continued during the conflict, despite the very high risks. Even in a chaotic situation, between changing governments and armed militias controlling the territory, "local NGOs have continued to expose atrocities and all forms of mass violence committed against the civilian population, such as looting, mass killings, abduction and forced recruitment of child soldiers, and destruction of vital social infrastructure. At times, these persistent NGOs in eastern Congo have emerged as the lone voices calling for moral and political action through human rights reports, urgent alerts, press releases, and spontaneous advocacy efforts"²⁵². This means that several actors we interviewed actively experienced the traumatic events of the nineties firsthand. Some of the organisations in our case study were in fact already active at the time of those events. This is an element that gives them credibility and increases their legitimisation strategies, especially in the

²⁴⁹ *Ivi*, pp.43-52.

²⁵⁰ *Ivi*, p.47.

²⁵¹ Interview with MASHUSHA G., Collectif des associations pour le développement de Bwuabo, Observatoire de la société civile Congolaise pour les minerais de paix, 7/12/2017.

²⁵² MCDUGALL G. J. *Decade of NGO struggle*, Human Rights Brief, 2004, p.3.

lobbying activities concerning the legislative initiatives on minerals.

"During the war, armed groups took control of the mines and started to exploit minerals. During this period human rights violations were very numerous and we assisted with the foundation of a large number of CSOs working to monitor economic crimes originating from mining"²⁵³.

An interesting example is the CDJP which, although it was established before the war, it has developed considerably and has modelled its work on issues related to the exploitation of resources.

"We have been active since 1988. Our target is the fight for the respect of human rights. We deal with issues related to peace, governance and improving the situation for women. In 1997 the CERN has created the observatories for natural resources"²⁵⁴.

Even during an interview with an MEP we had confirmation that NGOs, both local and international, have been able to draw attention to the problems of eastern DRC, at least since the war period. Attention then focused from the conflict to the issue of conflict minerals.

"I had approached this issue following the war and violence that erupted in eastern DRC. I followed the issue through an organisation called 'Rete Pace per il Congo' [a member of EurAc], in which the Xaverian missionaries of Parma, in Italy, are particularly active. It was very important for me to rely on this network, because I understood that they are credible and reliable. Thanks to them, I had access to a lot of information that is updated daily. It is clear that this network is an excellent reference point for who is interested in conflict minerals"²⁵⁵.

This MEP confirms our hypotheses, clearly stating that the work of NGOs has been important in decision-making process within EP. The legitimacy and credibility of local and international NGOs is clearly stated in this interview:

"Several NGOs have helped me to better understand the issue of conflict minerals, such as Global Witness. I also followed the EurAc network, which fought hard on this issue. Then there are local NGOs and Congolese CSOs. For me they are points of reference because they do not have a political colour, they do not belong to the parties. They are not exploited and therefore for me they have greater credibility and legitimacy. Their information, their news, could be defined as neutral and transparent. I

²⁵³ Interview with FURAHA F. 11/12/2017.

²⁵⁴ MCDOUGALL G. J. 2004, p.3.

²⁵⁵ Interview with KYENGE C. K. 26/6/2015.

consider their role very important. So the importance of local organisations is to do a job in the area, without having a party membership, with an activist attitude and to make certain problems known"²⁵⁶.

Among other things, this MEP confirmed that NGOs had an influence on his training and personal knowledge and therefore also on his work. The MEP, thanks to the work of NGOs, was able to have a more realistic view on the issue that helped it not to be influenced or hijacked by third-party interests.

"I can therefore say that when I arrived in EP, I had already been made aware of the issue by a network of associations that had worked on the subject (...). So in Parliament I certainly did not let anyone influence me, since I was already responsible and informed"²⁵⁷.

Especially after the Mobutu era and during regime change, Congolese NGOs have progressively tried to influence the work of the institutions and to participate in the transition process. A thriving civil society, especially in the east of the country, has sought opportunities "within the country's new political dispensation to push their agenda for change"²⁵⁸. It remains complicated to measure the impact and influence of NGO work, both locally, on Congolese institutions, and internationally, for example on institutions in the USA and EU. However, during this research we were greatly inspired by the ideas of a Congolese NGO that we interviewed. This sentence of the interview summarises the importance of NGO lobbying. From the heart of Central Africa, these NGOs have managed to open the debate on a complex and multifaceted issue.

"I think that our work on the problem of conflict minerals has at least had the effect of opening up the debate. Until a few years ago, no one knew about these problems. So if certain deputies have worked on this theme, which is to say that they have heard this message, means that they have taken ownership of this struggle. And it is a great effect for us. It is not just a question of North Kivutians, or Congolese, or Africans. The debate has become global. It is now a question on the lips of Europe and everywhere else"²⁵⁹.

In this sense, from the end of the conflict until the approval of the EU regulation, Congolese NGOs have managed to emerge and above all to bring the problem out into the light, through their tireless commitment and constant work.

²⁵⁶ *Ibidem*.

²⁵⁷ *Ibidem*.

²⁵⁸ MCDOUGALL G. J. 2004, p.3.

²⁵⁹ Interview with MUMBERE I. W. 8/12/2017.

1.6.4. NGOs highlight the issue of the governance

Through our interviews and some historical data, we wanted to underline how much the war of the nineties in the DRC is linked to the exploitation of minerals and to the change in the balance of power in the country. For these reasons too, the EU wanted to adopt a regulation to deal with the instability of the region and facilitate a healthier trade in resources. This historical context is extremely important to understand, in order to show how NGOs emerged and acted to influence the EU legislator. There is a key issue that has been raised in numerous interviews: the centrality of the concept of governance. This concept is linked both to the Central African conflicts, to the work of NGOs, and to the Conflict Minerals Regulation. The war for minerals completely blew up all the mechanisms of the state that had been stabilised during the Mobutu dictatorship. The exploitation of resources has been liberalised, in a disorderly way and the war has certainly not helped to improve things. Added to this are the deep-rooted problems linked to endemic corruption, which has developed historically and which today place the DRC in 161th place on a ranking of 180 countries in the Corruption Perceptions Index²⁶⁰. The examples of corruption cases are innumerable; in fact they also emerged from some of our interviews, even though we did not ask anything about it. We read below some examples.

"When will this situation, the exploitation of the DRC natural resources come to an end? The answer is simple: when the state holds all the power over the land. The problem is also the abuses of power by agents of state. For example here [in South Kivu] the governor was recently forced to resign, only to become ambassador to Ethiopia. This happens because he stole huge quantities of whatever he could. The problem [of the corruption] means that many people earn as much as possible; the minerals cross the border at any time and Rwanda makes money on this traffic. This happens here [in South Kivu], in North Kivu, in Bunia and in Ituri as well. It is also clear that from Kinshasa the government selects the rulers to send here and take a percentage on the traffic. This is why we are convinced that nothing will change for now, because everyone wins, from the President all the way down to the end of the chain"²⁶¹.

"There is no mine that does not pay a bribe to the state. You can imagine what the Chinese pay for having cobalt! There are billions [of dollars] that go into the pockets of ministers, etc., so those who try to fight this phenomenon from within are marginalised"²⁶².

"Recently there have been clashes in Bukavu. It was an attempt to

²⁶⁰ TRANSPARENCY INTERNATIONAL *Corruption Perceptions Index 2018*; www.transparency.org.

²⁶¹ Interview with MUHIMA A. S. 7/12/2017.

²⁶² Interview with BORDIGNON F. 22/11/2017.

smuggle minerals to Rwanda. One Sunday, customs officials arrested an anti-fraud manager [Abbas Kayonga]. Mr Kayonga was [long ago] part of a rebel movement. But in the name of peace, the gentleman was integrated into the post of anti fraud. Everyone knew that he was involved in trafficking and many people were afraid of him. He was doing unimaginable things. But on that day he was caught smuggling minerals. And so, mining fraud continues"²⁶³.

"It happened that the governor left the city a month ago. One day they discover his son at the border with eight million dollars. In fact the governor always used to leave with lots of suitcases, which no one controlled. He was going to Rwanda, a country that is becoming a tax haven. He gives two million at the border and he leave with six. Furthermore, the governor left unpaid workers' debts and in banks when he left. And he hasn't paid for years. I know one of his secretaries, who has not been paid since 2015. This is the situation and cannot change, except with great disasters"²⁶⁴.

The problem of corruption is linked more generally to that of governance. Several analysts have pointed out that no international law can truly work unless the internal management of the country also changes. In the east of the DRC the problem is particularly relevant and the various regulations "face serious problems of feasibility, reliability and security which refer to the more general problem of governance"²⁶⁵. Many aspects undermine the ability to implement a law because of a lack of governance. The most pertinent criticisms highlight the lack of administrative capacity, control by the agents in charge, lack of budgetary means and adequate wages. Furthermore, the problem of endemic insecurity, linked to the widespread presence of illegal armed groups, prevents the control of huge parts of the territory by the state²⁶⁶. These issues are also related to the problem of interference from states bordering the east of the DRC who take an interest with its internal affairs.

"Today we are trying to resolve the question of artisanal mining and violence around this exploitation by leaving aside the question of the origin of the violence. I think that until we have resolved the question of the origin of the violence, the problems will remain. This is the root of the problem behind the creation of armed groups. The states in the region, that they did what they did... all the armed groups committing these monstrous crimes... all this is the starting point of the problems that must be resolved. So the question of refugees, especially the Rwandans, is fundamental".

²⁶³ Interview with BULONGO S. 5/12/2017.

²⁶⁴ Interview with BORDIGNON F. 22/11/2017.

²⁶⁵ VIRCOULON T. *Derrière le problème des minerais des conflits, la gouvernance de Congo*, International Crisis Group, 19/4/2011, www.crisisgroup.org.

²⁶⁶ *Ibidem*.

"About the question of natural resources, there remains the fundamental issue of the security of the region. Together with the issue of governance and the reduction of inequalities, which are at the root of the problem. The issue of transparency in resource management is also critically important"²⁶⁷.

"The whole world, including Brussels, knows what happens here. They know that insecurity and political instability is due to the race for minerals. They know that minerals produced here [in eastern DRC] are sold in Rwanda and trafficked to China before they arrive in EU countries. They buy gold in Rwanda which has not produced even one gram of gold for sixty years. It is clear that the gold comes from here [DRC]. There are many gold dealers in Kigali. Just on the other side of the border [with Rwanda] there are at least four or five factories that work with [illegally trafficked Congolese] coltan. We know that minerals are tempting and when they arrive in Europe they do not smell and are not coloured with blood. And then everyone says I bought it from China, I bought it from Finland, from Holland"²⁶⁸.

On several occasions, the NGOs we interviewed have stated that the EU regulation is a positive initiative, but it will not work without the DRC situation improving in terms of governance.

"The main problem in the DRC is governance. As the main instrument of peace building is governance, it steps must be taken to ameliorate the situation"²⁶⁹.

"We believe that European regulation will be beneficial. It at least supports the hope that mineral resources will be exploited in a correct manner and respectful of human rights. We support these actions which come from Europe so that they can support our local actions, so that we can reduce the contrasts between the poverty of these communities and the abundance of resources. Answers are gradually being found. Unfortunately we are in a system where individual interests take precedence over collective interests"²⁷⁰.

For Congolese NGOs, international laws therefore cannot be successful unless they are supported by the internal will of the country, especially that of its rulers.

"It must be kept in mind that in Africa governments are sovereign. Any advocacy can only succeed if they have accompanied it with the support of the governments in the region. In the case of the DRC, to ensure the success, the effective functioning of a law, the authorities, Kabila, the army, the administration must be able to want it. It is necessary a climate

²⁶⁷ Interview with RUVUNANGIZA P. 9/10/2017.

²⁶⁸ Interview with BORDIGNON F. 22/11/2017.

²⁶⁹ Interview with KAJEMBA E. 25/9/2017.

²⁷⁰ Interview with FURAHA F. 11/12/2017.

of peace, security, a justice which functions because without these elements, all international initiatives will have only a mitigated impact, of not success, of failure. We must accept that all durable solutions can only come upstream, from inside the Congo. So the Congolese parliament must have the political will to produce good laws and these good laws must be accompanied by the political will for their implementation. Do not think that, even if I congratulate myself on the passing of the Dodd-Frank laws and the initiative of the EU, that it is with pride that I say it. On the contrary, it is out of shame. Congolese law, the mining code, etc... should work! And why do we have to resort to international initiatives? Because our presidents are leopards and lions. These laws will never solve governance problems in the Congo"²⁷¹.

In fact, other situations have been described by Congolese NGOs that demonstrate that there will be no development and healthy trade in the DRC, without first solving the problem of governance.

"Can companies come here to work fairly? I think that if they could come and work fairly, there would be no need for our network to exist and no need for us to work on improving governance. So the answer is no. Without good governance the DRC remains a weak state and companies will continue the exploitation: non-compliance with the mining code, non-compliance with human rights, non-compliance with international environmental regulations, non-compliance with corporate social and environmental responsibility. Exporters, counter, processing entity, small, medium or large extractive company, there is no one here who really works in equity. In law, yes. But equity means that the benefits of businesses should be seen in the territory, for example the construction of hospitals, roads, schools, etc. But when the fallout from mining only feeds a handful of individuals, the President of the Republic, the Prime Minister, the Minister of Mines, the Governor, the commanders of the armed forces, the rebel groups, it remains an economy of war. Such an economic situation does not build roads. The roads you see here were built by the EU and foundations. The mineral revenues do not contribute to the construction of infrastructures here"²⁷².

Moreover, some actors have even shown themselves disillusioned about a possible, even minimal, change in the situation.

"As long as these problems remain unresolved, the European regulation will fail. I think that they made it not to solve problems, but to be able to continue working in the region, with a quieter conscience. The problem is still governance"²⁷³.

²⁷¹ Interview with BAFILEMBA F. 6/12/2017.

²⁷² *Ibidem*.

²⁷³ Interview with USSENI J. 7/12/2017.

"And so we are convinced that there will be no peace until the country takes control of itself. But here the government does not even have an army. There's a rabble here"²⁷⁴!

We therefore understood that despite the good intentions of international legislators, there are other fundamental problems that must be addressed in order to improve the socio-economic context of the DRC. NGOs primarily denounce the lack of governance, corruption, the lack of transparency in the management of resources as a cause of instability, lack of security, the growth of inequalities and poverty. The discursive strategies of NGOs started from the awareness that no international law to improve the mineral trade can work without improving governance.

Conclusion

Raw materials represent the basis of contemporary societies, based on an enormous consumerism of technologies employed for the growth of the humans well-being. These societies absolutely need these resources for the growth of their wealth and power. The growth of the world population, which is associated to the growth of human well-being, has reached unprecedented levels, as with the consumption of natural resources. The global demand of raw materials has increased dramatically since industrialisation, because of the incessant discovery of new uses for minerals and mass consumption. They represent the base of the production in every economic sector, in every corner of the world and in every material good. The issue of mineral resources is strategically important for the EU market, especially in a moment in which global warming represents a new change. The green economy is the new deal on which global capitalism is switching on. The change to a low carbon society and the production of new and clean technologies will require huge quantities of metals and minerals. This is why the issue of mineral resources is essential and why this technical-economic element has been explored in this dissertation.

NGOs attempted to explore these problems before trying to influence new initiatives and the law-making process of the EU. The widespread knowledge on the specific use of some of the strategic minerals taken into consideration by the various initiatives on conflict minerals was possible thanks to the advocacy work of the NGOs. They have tried to mobilise public opinion of various countries on how the consumption of certain resources has a concrete impact on large parts of the planet and their populations. In this case, the NGOs have carried out useful action to make people aware of a phenomenon, they helped to define as 'conflict' minerals, which otherwise would have remained

²⁷⁴ Interview with BORDIGNON F. 22/11/2017.

unknown. Many initiatives have arisen from the work of NGOs, showing that they have a working credibility on these issues, increasing their visibility and legitimacy. NGOs also exposed themselves to political decision-makers and organised awareness-raising campaigns that prompted governments to take action to meet the challenges related to issues surrounding natural resources. Once again, however, it is necessary to highlight the fact that awareness of conflict minerals remains a niche and not a mass issue. Despite the important work carried out by some NGOs, as well as that of universities and academics, their successes are reminders that the general public is not acutely aware of the problems relating to the exploitation of resources.

The EU Regulation, as well as other conflict mineral initiatives, can be seen as a response provided by institutions. Impacts deriving from the exploitation of resources have economic, social, political and environmental consequences that should be regulated and in fact create a need to be controlled in the most efficient manner possible. Companies and consumers must be protected from the fluctuation of the demand as well as populations living in resource-rich areas of the world must be protected from instability and conflicts. EU Regulation intends to act in this sense. In order to understand the objectives and the contents of this law, we have explained in this chapter the geological characteristics of the metals which are targeted by them. Political aspects, especially the intervention of NGOs and their action to influence the EU legislator, will be discussed in the final chapter of this dissertation.

Another objective of the chapter was to highlight the role that NGOs have been played since the beginning of the war for minerals. With regards to the conflict in the east of the DRC, we understood that NGOs have also emerged as new actors since the regime change. They are part of the change in the balance of powers that bring new economic and political actors playing a role in the country. The interviews we organised and explored show how many of the NGOs interviewed were active in the region since the beginning of the conflict, or before, in order to provide documentary evidence of the huge exploitation of resources which has directly contributed to the perpetuation of the conflict. With their research and their studies, NGOs have been able to contribute to the writing of crucial UN reports in the early 2000s. Thanks to these reports, which named and highlighted the responsibilities of states, international corporations, individuals and armed groups, NGOs drew attention to the problems of the eastern DRC. They had the merit of opening the debate that went global after the publication of the UN reports.

Chapter 2: NGOs and legitimation

"The international community also has a role to play in the maintenance of security. As we say here, we try to look for lice in the heads of our compatriots but the heads of those at the international level are also full of lice. Now we have learned to look for lice and fleas everywhere. There are certainly state responsibilities, but also extra-state and international responsibilities"²⁷⁵.

²⁷⁵ Interview with FURAHA F., Manager of natural resources observatory at CDJP, 11/12/2017.

Introduction

Based in all countries without being distributed proportionally, the presence and collective role of a large number of NGOs is a fascinating subject. Discussing a 'global associational revolution', Salomon noted that "from the developed countries of North America, Europe and Asia to the developing societies of Africa, Latin America and the former Soviet bloc, people are forming associations, foundations and similar institutions to deliver human services, promote grass-roots economic development, prevent environmental degradation, protect civil rights and pursue a thousand other objectives formerly unattended or left to the state"²⁷⁶. Each association has its own specific characteristics. They are operating around many different issues and participate in the public arena as well as having the potential to influence the behaviour of civil society and the policy agenda. NGOs have proliferated greatly since they first grew in size and visibility, subsequently becoming complex entities. The majority of market economies have seen a general increase in the economic importance of non-profit organisations as providers of health, education, social and cultural services²⁷⁷. In a similar way, the increased professionalism of NGOs and their workers and projects have raised the quality of their campaigns and expanded the possibilities of collecting funds, both public and private.

Before analysing the legitimisation strategies and influence of NGOs, their lobbying and advocacy activities throughout the EU conflict minerals Regulation, this chapter will thoroughly review NGO definitions; history, status, proliferation and activities. As a starting point, we will consider NGOs operating today in their four main fields of action such as: development, humanitarian action, environment and human rights. Gradually we will focus our interest on the NGOs that deal with lobbying in the European institutions and specifically, the ones that, thanks to the indispensable contribution of NGOs in the DRC, have tried to influence the EU Conflict Minerals Regulation.

As this study is focused on a small number of NGOs, we will delimit it with a range of definitions of this type of organisation without considering other private actors, i.e. multinational corporations operating in the global minerals market and affected by the EU law.

An important goal of this chapter is to demonstrate how NGOs have gained legitimisation in the society, to the point of being able to influence the lawmaking process. This will be demonstrated in

²⁷⁶ SALOMON L. *The rise of the nonprofit sector*, Foreign Affairs, 1994, p.109.

²⁷⁷ ANHEIER H. K. *Il ruolo del settore non profit nel rafforzamento della coesione sociale: tendenze e scenari*, Sociologia e politiche sociali, 2008.

this chapter by a focus on theory and in last chapter by practice. We will demonstrate how the proliferation of NGOs and their interactions; activities, alliances, resources, institutions, donors have contributed to give them a legitimate role. We will report some criticisms that also come from the workers of the NGOs themselves.

We will also investigate other research on the concepts of legitimacy and legitimation. Then we will analyse the origins of legitimation. We will understand the strategies related to legitimisation, first of all the discourse production but also the importance of the reference audience. Other crucial factors that form the legitimisation process will also be explored.

By the end of the chapter it will be clear that, being legitimate, NGOs represent a particular form of power in politics. In our specific case, we will see later how they were able to influence the EU regulation on conflict minerals. All of the theory developed on NGOs explored in this chapter, will find practical confirmation in the following chapters.

2.1. NGOs: Definitions and legitimation in international institutions

The NGO landscape inside civil society is highly varied. Until the word NGO became widespread, authors "also employed other expressions. For example, they referred to 'private organisations' or 'international pressure groups' (...) 'voluntary agencies' or 'volas'"²⁷⁸. Very generally, NGOs are independent from governments and not for profit. If we take a look inside the *Historical Guide to NGOs in Britain* we find an interesting and much more complete definition:

"An NGO 'is a not-for-profit, voluntary citizens' group, which is organised on a local, national or international level to address issues in support of the public good. Task-oriented and made up of people with common interests, NGOs perform a variety of services and humanitarian functions, bring citizens' concerns to governments, monitor policy and programme implementation, and encourage participation of civil society stakeholders at the community level. They provide analysis and expertise, serve as early warning mechanisms, and help monitor and implement international agreements. Some are organised around specific issues, such as human rights, the environment or health. Their relationship with offices and agencies of the UN system differs depending on their location and their mandate"²⁷⁹.

²⁷⁸ MARTENS K. *Mission impossible? Defining nongovernmental organizations*, Voluntas: International Journal of Voluntary and Nonprofit Organizations, 2002, p.272.

²⁷⁹ HILTON M. et al. *A Historical Guide to NGOs in Britain: Charities, civil society and the voluntary sector since*

According to the Historical Guide, this same definition was adopted by the UN "with an understandable focus on humanitarian work and developing civil society". However, "there has never been a solid consensus about how NGOs should precisely be defined"²⁸⁰. It is important to note that in this definition, we state the importance of the lobbying and advocacy activities: NGOs should "bring citizens' concerns to governments, monitor policy and programme implementation, and encourage participation of civil society stakeholders at the community level"²⁸¹.

According to De Senillosa, it is necessary to consider NGOs as a part of social movements. In this way they are able to "influence private and public decision-making", to "rely on a wide social base", to "claim to hold alternative ideologies or values" and to "do advocacy and lobbying on behalf of people or communities whose human rights are infringed by the despotic exercise of economic and political power, both locally and internationally"²⁸².

NGOs are defined by Malena as "private organisations that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development"; they are "typically value-based organisations which depend, in whole or in part, on charitable donations and voluntary service" and they must be independent from government²⁸³.

In order to be considered international, for some authors it is necessary that an organisation bring together members from at least two countries. The "Institute de Droit International" in 1950 defined international associations as groupings of people or communities who perform an international activity of general interest, without any exclusively national concern²⁸⁴.

Another important contribution comes from Clarke who defines NGOs as "private, non-profit, professional organisations, with a distinctive legal character, concerned with public welfare goals"²⁸⁵. For the purpose of this thesis, we will consider as a starting point this author's point of

1945, Palgrave Macmillan, 2012.

²⁸⁰ Ivi, p.9.

²⁸¹ Ibidem.

²⁸² DE SENILLOSA I. *A new age of social movements: a fifth generation of non-governmental development organizations in the making?*, Development in Practice 8, no. 1, 1998, pp.41-42.

²⁸³ MALENA C. *Working with NGOs. A Practical Guide to Operational Collaboration between the World Bank and Non-Governmental Organizations*, World Bank, 1995, pp.13-14.

²⁸⁴ LAPAŠ D., MRLJIĆ R. *International non-governmental organizations, 'Soft Law' and protection of environment*, Contemporary legal and economic issues IV. Pravni fakultet u Osijeku, 2013.

²⁸⁵ CLARKE G. *Non- governmental organizations (NGOs) and politics in the developing world*, Political studies, 1998 Mar 1;46(1): pp.36-37.

view when he includes church development agencies and academic think-tanks but excludes "other non-profit organisations such as private hospitals and schools, religious groups, sports clubs, quasi-autonomous non-governmental organisations"²⁸⁶ and political parties. Furthermore, this thesis will also exclude fraternal organisations because they are not concerned with economic and political development issues.

An interesting point was made by Queinnec who defined NGOs as "public service associations" that bring assistance for free to the needy²⁸⁷. Other definitions are much more concise. For Iriye, for example, an NGO is "a voluntary, non-state, non-profit, non-religious and non-military association. The voluntary nature of these organisations – that is, their openness to all those who wish to join – distinguishes them from others that are restricted to certain categories of people, whether nationality, gender, religion, class, region, or any other division". Iriye also wrote about an NGO simply as an organisation "not established by an agreement among governments"²⁸⁸. Charnovitz provides a legal and general account which follows on from Queinnec when he noted that "NGOs are groups of individuals organised for the myriad of reasons that engage human imagination and aspiration. They can be set up to advocate a particular cause, such as human rights, or to carry out programs on the ground, such as disaster relief. They can have memberships ranging from local to global"²⁸⁹.

The *Handbook of Global Public Relations* underlines some criteria for obtaining non-governmental status: "(I) NGOs should not be constituted as political parties, (II) they should not have profit as a motive, and (III) they should not be criminal in operation – in particular, they should be non-violent"²⁹⁰. Thanks to Dango²⁹¹ we can describe an NGO as a "non-violent organisation that is both independent of government and not serving an immediate economic interest, with at least some interest in having socio-political influence"²⁹². Vakil focuses on development NGOs, defining them as: "self-governing, private, not-for-profit organisations that are geared to improving the quality of life for disadvantaged people"²⁹³.

²⁸⁶ Ivi, p.37.

²⁸⁷ QUEINNEC E. *La croissance des ONG humanitaires*. Revue française de gestion, 2007, 8: p.84.

²⁸⁸ IRIYE A. *Global community: The role of international organizations in the making of the contemporary world*, Univ of California Press, 2002, p.2;

IRIYE A. *A century of NGOs*, Diplomatic History, 1999, 23.3, pp.421-435.

²⁸⁹ VERČIĆ D. *The Global Public Relations Handbook: Theory, Research, and Practice*, Lawrence Erlbaum Associates, 2003, p.491.

²⁹⁰ *Ibidem*.

²⁹¹ Database of Archives of UK Non-Governmental Organisations since 1945; accessed on 5/5/2016; www.ngo.bham.ac.uk/definingfurther.htm.

²⁹² HILTON M. 2012, p.10.

²⁹³ KIRKPATRICK C. H., CLARKE R., POLIDANO C. (ed.) *Handbook on development policy and management*,

Other authors underlined that the terms NGO and non-profit organisation (NPO) are nearly synonymous in some countries like the USA. An NPO "has a formal organisation, is organised independently of government, places constraints on redistribution of earnings, practices self-governance and has voluntary membership"²⁹⁴. Ryfman takes five main characteristics of NGOs in order to determine a set of minimal common attributes: I) the concept of volunteering for a not-for-profit entity, meaning that individuals who take part in the organisation "are free and considered to be vested with rights with a view to achieving a common purpose for the benefit of others and not for the members alone"; II) the legal framework, that strictly depends on the country where an NGO is based; III) "the relationship with public and private authorities both at the national level (with the state and its institutions, in particular) and at the international level"; IV) the reference to some specific values; V) "the transnational nature of the work carried out, irrespective of the conditions and procedures that govern it"²⁹⁵.

One particular definition of these organisations legitimates them worldwide, because it comes from the World Bank (WB), the largest global development institution. This financial organisation has included NGOs inside the definition of civil society. Indeed, the WB uses "the term civil society to refer to the wide array of non-governmental and not-for-profit organisations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. CSOs therefore refer to a wide of array of organisations: community groups, NGOs, labour unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations"²⁹⁶. The Bank specifically defines NGOs as "private organisations that pursue activities to relieve the suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development"²⁹⁷.

For the 2012 Italian cooperation forum, NGOs are considered part of the private non-profit sector, which also includes foundations, associations, trade unions, cooperatives and social enterprises rooted in the land. They state that this solidarity is the vocation of the private non-profit sector and their activities are promoted in many sectors from financial to manufacturing. Their interventions in developing countries has achieved self-financed or co-financed projects and encouraged the

Edward Elgar Publishing, 2002, p.374.

²⁹⁴ AHMED S., POTTER D. M. *NGOs in international politics*, Bloomfield: Kumarian Press, 2006, p.9.

²⁹⁵ RYFMAN P. *Non-governmental organizations: an indispensable player of humanitarian aid*, International Review of the Red Cross, 2007, p.27.

²⁹⁶ Cf. WORLD BANK-CIVIL SOCIETY COLLABORATION, *Non-Governmental Organizations and Civil Society Engagement in World Bank Supported Projects: Lessons from OED Evaluations*, 2002.

²⁹⁷ *Ivi*, p.1.

development of local enterprises through the transferring of technical know-how. This strengthens the production capacity and local supply chain which promotes opportunities in the market and in promoting networks and partnerships. NGOs are consequently more and more the key partner for companies, both in developing policies and in promoting mutual benefit. NGOs bring real added value in their wealth of knowledge as they establish relationships directly with developing countries, which enables them to start a coherent strategy and respect the expectations and rights of the countries they are targeting in their interventions²⁹⁸.

2.1.1. NGOs in UN system

The UN was founded following the negotiations of the San Francisco Conference which took place between April and June 1945. The Charter that constitutes the foundation of the organisation was signed on June 26, 1945 and entered into force on October 24 of the same year, following ratification by the five permanent members of the Security Council. The Charter crystallises the participation of NGOs in international governance. Although these organisations had already been active for about two centuries, since 1945 they are officially recognised as having an active role in international politics and legislation, thus being able to influence governments and consequently global society.

One of the subsidiary bodies of the UN is The Economic and Social Council (ECOSOC), which aims to advance the three dimensions of sustainable development - economic, social and environmental. The ECOSOC is one of the six principal organs of the UN, responsible for the direction and coordination of the economic, social, humanitarian, and cultural activities carried out by the UN. This body is in charge of maintaining relations with NGOs. Article 71 of the UN charter states: "the ECOSOC may make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence. Such arrangements may be made with IOs and, where appropriate, with national organisations after consultation with the member of the UN concerned"²⁹⁹.

By acknowledging NGOs in this role, the UN recognises them *de facto* as an actor of international law. Nevertheless, this does not mean that they are organisations under international law. They remain essentially private legal entities under the national legislations of the country in which they

²⁹⁸ Libro bianco della cooperazione italiana, *I documenti del Forum della Cooperazione Internazionale*, Milano 1-2 ottobre 2012, pp.46-49.

²⁹⁹ UN Charter, *Chapter X: The Economic and Social Council*, art.71.

are established. It is important to remember that from the Article 71 until the resolution 1996/31, the UN only considers international NGOs; today the UN resolutions refer to regional, national and IOs³⁰⁰.

The NGOs which have the consultative status at ECOSOC have the opportunity to conduct advocacy activities, "expressing their views and influencing the work of the Council"³⁰¹. The consultative status benefits both the UN and the NGOs "as stated by resolution 1996/31: (...) consultative arrangements are to be made, on the one hand, for the purpose of enabling the Council or one of its bodies to secure expert information or advice from organisations having special competence in the subjects for which consultative arrangements are made, and, on the other hand, to enable international, regional, sub-regional and national organisations that represent important elements of public opinion to express their views"³⁰². During traditional meetings, they remind the commitments made by stakeholders at the international level and their impact at local level with the support of detailed reports and specific recommendations. They represent important sources of information for researchers or policymakers. NGOs are also using their field experience and connections to highlight flaws within the UN system and other failings in their approach. They can also act as representatives of the beneficiaries on the occasion of significant UN meetings and to encourage participants to invest in new fields of intervention.

Since 1945, NGOs have had full access to all UN documents and as they can attend different meetings, conferences and proceedings, their influence has gradually grown. They have the possibility to reach a considerable amount of information as well as their sources directly, not to mention access to join high level diplomats, politicians and officials that could reveal the political process, including informal discussion, hearings and private meetings. The legitimacy of NGOs within the political system means that workers and activists of an organisation feel the right to participate actively in negotiations, official meetings, etc. representing another opportunity for NGOs to influence the agenda-setting processes at the UN.

The heart of the UN, the ECOSOC, who want to achieve an economic, social and environmental development, legitimise NGOs by defining them as:

"any such organisation that is not established by a governmental entity or intergovernmental

³⁰⁰ MARTENS K. 2002, p.274.

³⁰¹ UN *Working with ECOSOC, an NGOs Guide to Consultative Status*, New York, 2011.

³⁰² UN Resolution 1996/31, Economic and Social Council; accessed on 24/11/2016; www.un.org.

agreement (...) including organisations that accept members designated by governmental authorities, provided that such membership does not interfere with the free expression of views of the organisation. (...) The basic resources of the organisation shall be derived in the main part from contributions of the national affiliates or other components or from individual members. (...) Any financial contribution or other support, direct or indirect, from a Government to the organisation shall be openly declared to the (...) UN³⁰³".

ECOSOC resolution 1996/31 currently states that, unless otherwise stated, the term NGOs must be reported to non-governmental organisations operating at the national, sub-regional, regional or international.

2.1.2. NGOs status in other international institutions and conventions

NGOs are legitimised by many institutions and conventions. For example, since its foundation in 1949, the Council of Europe has regulated its relations with the NGOs operating within MSs. In fact, it considered it essential to open up to the interests of civil society in order to guarantee the effectiveness of its actions, aimed at guaranteeing democracy, good governance, respect for human rights and freedoms. Thus the 'INGOs Conference of the Council of Europe' was created to represent the interests of civil society within the organisation. With Resolution (51) 30F of 1951, the Council formalised the relationship with NGOs, recognising their role as consultative bodies. With Resolution (72) 3 of 1972 the relationship is further regulated and the participation of NGOs in the work, programs and policies of the organisation is reinforced. Since 2003, NGOs have also obtained participatory status. These collaborations serve to permeate the opinions of civil society but also to expand the network of contacts or the circulation of documents and information³⁰⁴.

As these institutions are committed towards the NGOs sector³⁰⁵, we can establish from a EP study a series of common characteristics for NGOs:

"NGOs are not created to generate personal profit. Although they may have paid employees and engage in revenue-generating activities they do not distribute their profits or surpluses to members

³⁰³ RYFMAN P. 2007, p.26;

UN Doc. E/RES/1968/1296 (XIV) Arrangements for Consultation with Non-Governmental Organizations; accessed on 8/5/2016; www.un-documents.net/1296.htm.

³⁰⁴ SGUEO G. *L'attività delle Ong presso il Consiglio d'Europa*, Diritto civile e commerciale, Diritto&Diritti, 2008, pp.1-9.

³⁰⁵ In 1951 the Council of Europe has establish arrangements for consultative relationship with NGOs.

Cf.: LINDBLOM A-K. *Non-governmental organisations in international law*, Cambridge University Press, 2005.

or management; NGOs are voluntary. This means that they are formed voluntarily and that there is usually an element of voluntary participation in the organisation; NGOs are distinguished from informal or *ad hoc* groups by having some degree of formal or institutional existence. Usually, NGOs have formal statutes or other governing document setting out their mission, objectives and scope; they are accountable to their members and donors; they are independent, in particular of government and other public authorities and of political parties or commercial organisations; they are not self-serving in aims and related values; their aim is to act in the public arena at large, on concerns and issues related to the wellbeing of people, specific groups of people or society as a whole; they are not pursuing the commercial or professional interests of their members"³⁰⁶.

The EP study insists on the non-profit-making character of NGOs: "NGOs would need to be independent and non-profit-making and to pursue activities in at least three European countries, either alone or in the form of an association". Similar words have been used by the DG Justice, Freedom and Security at least since July 2010³⁰⁷. Afterwards, the same study refers to the definition of NGOs used by some EC departments, entities and agencies. First of all, the EC's Humanitarian Aid and Civil Protection department (ECHO) underline the not-for-profit nature:

NGOs "eligible for Community financing for the implementation of operations under this Regulation must meet the following criteria: (a) be non-profit-making autonomous organisations in a MS of the Community under the laws in force in that MS; (b) have their main headquarters in a MS of the Community or in third countries in receipt of Community aid. This headquarters must be the effective decision-making centre for all operations financed under this Regulation. Exceptionally, the headquarters may be in a third donor country"³⁰⁸.

Despite numerous attempts that began at the beginning of the century, there is currently no widely adopted international status for NGOs in international law³⁰⁹. The debate on the legal status of NGOs had already begun in 1910 at the *Institut de Droit International* in Paris, which produced a draft convention on NGOs which defined their international status. In 1923, the Institute prepared a draft treaty on international associations that were defined as "groups of persons or associations, voluntarily created on private initiative, which perform, without seeking profit, an international

³⁰⁶ EU Directorate-General for Internal Policies of the Union, *Financing of Non-governmental Organisations (NGO) from the EU Budget*, study 2010, p.16; www.europarl.europa.eu.

³⁰⁷ *Ivi*, pp.16-17.

³⁰⁸ EU *Official Journal of the European Communities* No L 163/ 1, Council Regulation 1257/96 of 20/6/1996 concerning humanitarian aid, art.7.

³⁰⁹ MARTENS K. *Examining the (Non-) Status of NGOs in International law*, Indiana Journal of Global Legal Studies, Vol.10, Issue 2, 2003, p.2.

activity of general interest, and do not come exclusively under national order"³¹⁰. It provided the right of appeal to the Permanent Court of International Justice and the right to register the association in an international office. But this proposal was not immediately followed from governments that then gradually adopted different national laws.

The only international treaty that set the legal basis for the INGO was adopted in Strasbourg in April 1985. It is the 'European Convention on the Recognition of the Legal Personality of INGOs', entered into force on January 1991. According to Art. 1, NGOs must fulfil the following conditions: "I) have a non-profit-making aim of international utility; II) have been established by an instrument governed by the internal law of a Party; III) carry on their activities with effect in at least two States; and IV) have their statutory office in the territory of a Party and the central management and control in the territory of that Party or of another Party"³¹¹. At the time of writing the treaty has been ratified by Austria, Belgium, Cyprus, France, Greece, Macedonia, the Netherlands, Portugal, Slovenia, Switzerland and the United Kingdom (UK).

2.1.3. NGO: Definition

After presenting several definitions of NGOs, we can finally determine the most useful notion of NGO for the purpose of this thesis:

an NGO is a private organisation independent from the government or public authorities that does not make a profit. It is usually founded by citizens, united by a common interest and intends to provide services for members or for some specific categories of people. It works to achieve the objectives that it sets with reference to specific values to which it refers. Most NGOs are active in development or educational projects, humanitarian action, human rights improvement, health services provision or environmental defence. Some specialise in advocacy and lobbying work, developing close collaboration with the authorities. Some of them operate only or mainly at the local level, focusing on providing their services to the members of their home community. Others, the INGOs, operate in more than one country, thus developing an international character. Almost all of them collaborate in a more or less stable manner with other similar organisations and develop common projects. The vast majority of the NGOs analysed for this study are led by professionals. The analysed organisations finance themselves in very different ways. However, even if it is not our

³¹⁰ *Ivi*, p.275.

³¹¹ European Convention on the Recognition of the Legal Personality of INGOs, 1986.

aim to study this aspect, we point out that the budgets available for them are extremely different: some of them can count on substantial resources, while others have very little economic possibilities.

This definition was processed and synthesised from us for this thesis and, in order to avoid any misunderstanding, will be the one to which we will refer whenever we talk about NGOs. It will be useful as the NGOs analysed in this thesis will have some quite heterogeneous characteristics. In fact, sometimes it will be an individual NGO, while other instances will focus on a network that brings together and represents various associations.

2.1.4. NGOs legitimation in the production of norms and standards

This research synthesis is focused on the results of previous studies and it describes state of the art research as well as unresolved issues³¹². Many scholarly inquiries through various publications following have followed different paths. In this review of existing literature, we have chosen to follow a discursive approach or rather a "narrative style of presentation", which, at this stage, is the most appropriate means to convey the complexity of a topic encompassing a variety of disciplines³¹³.

Several authors have worked on the role of NGOs in affecting the production of standards and regulations without, however, considering their legitimation strategies. As Le Prestre pointed out "more and more frequently NGOs are allowed, if not to participate in, at least to observe international negotiations"³¹⁴. In this process, NGOs act as a new transnational identity because they are "unconstrained by the idea of territoriality"³¹⁵. Since 1945 the transformation of the international context has allowed the active participation of non-state actors in policy-making and in the production of national, international and transnational regulations³¹⁶. The researches of Art have detailed "the political influence of NGOs, such as Greenpeace International, Friends of the Earth International and the World Wide Fund for Nature, on global environmental policies"³¹⁷. These

³¹² COOPER H. M. *Synthesizing research: a guide for literature reviews*, Thousand Oaks, Sage, 1998, p.201.

³¹³ JESSON J., MATHESON L., LACEY F. M. *Doing your literature review: traditional and systematic techniques*, Sage, 2011, p.175.

³¹⁴ LE PRESTRE P. *Protection de l'environnement et relations internationales : les défis de l'écopolitique mondiale*, Armand Colin, Paris, 2005, p.86.

³¹⁵ DESOMBRE E. R. *Global Environment and World Politics*, A&C Black, 2005, p.85.

³¹⁶ MARTINEZ C. V. *Constraints for the participation of NGOs in the WTO: Courses of action*, Transnational Associations, 2, 2005, pp.79-86.

³¹⁷ ARTS B. *Political influence of NGOs on international environmental issues*, In GOVERDE H., CERNY P., HAUGAARD M., LENTNER H. *Power in contemporary politics: Theories, practices, globalizations*, SAGE, 2000,

NGOs have become important global players at least "since the process of globalisation redefined the role not only of the nation-state, but of non-state actors as well"³¹⁸. Their role and influence has significantly grown partly because the number of NGOs has dramatically increased and they now represent millions of civilians worldwide, another reason why their legitimacy has increased. Consequently, some governments are more and more willing to involve NGOs in order to receive extra information or expertise on specific topics, and sometimes to allow them to participate in meetings, projects or monitoring procedures³¹⁹.

Various scholars analysed the intertwined roles of NGOs and the UN in the production of international norms. These studies investigated the legal frameworks allowing the establishment of consultations between the UN Economic and Social Council and NGOs, under article 71 of the UN Charter thus increasing NGOs' influence *vis à vis* the UN³²⁰. Kim has studied the role of international NGOs in the global diffusion of human rights and, as a result, their enforcement by local actors into national governments³²¹. Matthews has underlined how NGOs enhanced the production and diffusion of intellectual property rights by supporting the work of delegates in multilateral institutions³²². De Jesús Butler has highlighted the participation of NGOs in the EU law-making process, showing the different instruments available for NGOs to influence EU institutions³²³. He observes that NGOs cooperate especially well with the EP because it formally recognises intergroups, meaning that "they are able to organise seminars, hearings and meetings" around particular issues and in this way NGOs "put forward their ideas and persuade MEPs to adopt their suggestions"³²⁴.

Further literature has put the focus on the role played by NGOs in influencing specific sectors of the

p.132.

³¹⁸ *Ivi*, pp.132-149.

³¹⁹ KORTHALS ALTES F. *The role of NGOs and the private sector in international relations*, AIV advisory report, 51, 2006, p.7.

³²⁰ JAMART J. A. *Le rôle des organisations non gouvernementales dans le système des Nations Unies*, in *Actualités du droit*, 1, 1999, pp.47-88;

WILLETTS P. (Ed.), *The conscience of the world: The influence of non-governmental organisations in the UN system*, C. Hurst & Co. Publishers, 1996;

BENVENUTI P. *The Nature and Features of International Non Governmental Organizations*, Italian Yearbook of International Law, 79, 1978, pp.84-102.

³²¹ KIM D. *International Nongovernmental Organizations and the Global Diffusion of National Human Rights Institutions*, International Organization, 67(03), 2013, pp.505-539.

³²² MATTHEWS D. *Intellectual property, human rights and development: the role of NGOs and social movements*, Edward Elgar Publishing, 2011, p.221.

³²³ DE JESÚS BUTLER I. *Non-governmental Organisation Participation in the EU Law-making Process: The Example of Social Non-governmental Organisations at the Commission, Parliament and Council*, European Law Journal, 14(5), 2008, pp.558-582.

³²⁴ *Ivi*, p.581.

EU legislation and decision-making process, such as peace missions and humanitarian interventions³²⁵. The activism of NGOs in post-1989 conventional arms control has been explained by Stavrianakis. In this case NGOs first had an impact on UK national legislation, which then has spread all over the EU³²⁶. The role and the impact of NGOs in environmental governance has also been widely studied. Van Rooy investigated the role of development NGOs in lobbying activities toward governments, in order to influence international environmental regulations since the UN World Food Conference in 1974³²⁷; Aubertin shows how NGOs have started to act for the biodiversity governance³²⁸; O'Neill applies IR theories and tools to global environmental problems and the protection of the environment³²⁹; Lund, Corell and Betsill analyse the different objectives and interventions of actors coming from enterprises and NGOs during climate change negotiations³³⁰.

To sum up, authors demonstrated a polyhedral interest in studying how NGOs influence the production of international norms in several sectors (human rights, environment, climate change, humanitarian intervention). Some highlighted the role of NGOs at the governmental level. Others concentrated upon legal instruments allowing NGOs to influence law-makers at international level (such as the UN and the EU).

However, the role of NGOs in influencing the initiatives concerning minerals from conflict-affected and high-risk areas has not been investigated enough. Furthermore, the question of legitimization has not been addressed with regards to how the legitimization strategies of NGOs can add legitimacy to new norms and directly facilitate their acceptance in the eyes of the legislator and society. This gap in the literature contrasts with the NGOs activism in this sector. Several NGOs have indeed implemented lobbying and advocacy initiatives related to the conflict minerals issue at the local, regional and international levels. These initiatives have been launched on top of the efforts related to peacekeeping and peace-building, as well as, humanitarian assistance and development projects to stop the trade of minerals coming from high-risk and conflict areas. NGOs advocated for "the

³²⁵ IRRERA D. *EU and Civil Society: The Case of NGOs in Peace Missions and Humanitarian Intervention*, Romanian Journal of European Affairs, 10(1), 2010, p.32.

³²⁶ STAVRIANAKIS A. *Taking aim at the arms trade: NGOs, global civil society and the world military order*, Zed Books, 2010, p.8 and pp.33-92.

³²⁷ VAN ROOY A. *The frontiers of influence: NGO lobbying at the 1974 World Food Conference, the 1992 Earth Summit and beyond*, World Development, 25(1), 1997, pp.93-114.

³²⁸ AUBERTIN C. *ONG et biodiversité: Représenter la nature?*, IRD Editions, 2005.

³²⁹ O'NEILL K. *The environment and international relations*, Cambridge University Press, 2009, pp.167-196.

³³⁰ LUND E. *Environmental diplomacy: comparing the influence of business and environmental NGOs in negotiations on reform of the clean development mechanism*, Environmental Politics, 22(5), 2013, pp.739-759;
CORELL E., BETSILL M. M. *A comparative look at NGO influence in international environmental negotiations: Desertification and climate change*, Global Environmental Politics, 1(4), 2001, pp.86-107.

development of certification schemes, traceability systems and due diligence measures"³³¹ and so forth. In addition, if we look further into the rich literature concerning natural resources and South Kivu, we do not find any specific study evaluating the role of NGOs and their legitimacy in this context³³².

This study will contribute to connect and close this knowledge gap. It will explain how NGOs have used several strategies that contributed to the legitimacy and relevance of the EU conflict mineral initiative ³³³. The next paragraphs will also be useful to reflect on the concept of legitimation which will then be linked to our specific case study. Some aspects of this case study will enrich the literature that has existed so far and this work will allow us to better understand certain current dynamics of the concept of legitimation.

2.1.5. NGOs and IR theory

The legitimation of NGOs in influencing and shaping norms is still a relatively unexplored field of study. At the beginning of 2000, Clarke made some comments in an article that has achieved some success³³⁴. Notwithstanding, we are persuaded that the legitimation strategies of NGOs should have more visibility inside IR theory.

Since the end of WW2 and until the end of the century, much attention was given to the importance of nation-states: "realism in particular has been the dominant paradigm for the last half century, and it is a theoretical approach notoriously indifferent to non-state actors"³³⁵. For realists, in an anarchic international system without a world government, nation-states are the only actors that can maintain their own security. This security dilemma determines priorities and state interests as other actors cannot do it. Realism only trusts in the nation-states and in their devices, in order to assure their own security. The role of NGOs and their activities are not contemplated by realism. However, we

³³¹ MATTHYSEN K., ZARAGOZA MONTEJANO A. *'Conflict Minerals' initiatives in DR Congo: Perceptions of local mining communities*, IPIS, Antwerp, 2013, p.3 and p.41.

³³² MUKASA A. N., BURAYE J. K. *La filière stannifère artisanale au Sud-Kivu: cas du coltan et de la cassitérite*, Annuaire de l'Afrique des Grands Lacs 2008-2009; KABUYA KALALA F., TSHIUNZA MBIYE O. *Ressources naturelles, gouvernance et défis d'une croissance soutenue en RDC*, Annuaire de l'Afrique des Grands Lacs 2008-2009, pp.141-159; LUJALA P. *Natural resources and armed civil conflict*, NTNU – Norwegian University of Science and Technology, 2008.

³³³ See for example positions expressed by stakeholders in consultations on the "EU initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas". The list of 182 public contributors was consulted on 9/5/2015; www.trade.ec.europa.eu/consultations/?consul_id=174.

³³⁴ CLARKE G. 1998, pp.36-52.

³³⁵ AHMED S., POTTER D. M. 2006, p.10.

need to quote realism because it reminds us that we are still in a state-centred international system, so that the actions of others, in comparison, can be seen as significantly restrained. It seems that the state remains not only the most important international actor, but the major contributor to global structures. As a result of this, NGOs have not received the attention that they deserve. Their role and the legitimacy of their action is not considered, at least in comparison to states, as influential. While the state may remain the most important actor, particularly in terms of lawmaking, in this time of regional and federal policy initiatives, there is significant potential for NGOs and other non-state actors to influence policy and international laws and agreements.

The legitimization of NGOs could be connected to liberalism in the sense that a variety of actors are developing cooperative relationships in a more peaceful approach. As the security dilemma does not cover all fields of activity of the state, more actors interact outside of the limits of its power and capacity of interventions. In this case it happens that states contract some services, through the distribution of funds, to third organisations, such as NGOs. This can also be considered as proof of the legitimacy of these actors, who are subsidised by the state to offer services.

Furthermore, the interdependence theory of the 1970s does not offer much attention to NGOs and continues to consider the state as the centre and major object of the studies. Regime theory remotely hints that "non-state actors play critical roles in helping to launch new forms of international regulation. Interest groups, transnational coalitions, and individuals lobby governments to solve some international problem"³³⁶. This was the case, for example, when environmental NGOs and other groups influenced the creation of international regulations, in order to reduce pollution or to protect some animal species. According to Ahmed and Potter, NGOs do not receive much attention within the framework of IR because they are not readily seen in traditional political-science terms. In particular they do not possess some of the state resources (sovereignty, territory and coercive capability) and they do not dispose of economic power as multinational corporations³³⁷. Things, however, are changing, not least in part because of the fact that today some NGOs operate huge budgets.

We must underline that, during the Cold War period, much attention was concentrated on the state and IR theory was focused on the operations of the two power blocks. Since the 1990s and the re-emergence of transnationalism from the interdependence theory, studies have become much more

³³⁶ HOLSTI K. J. *International politics: a framework for analysis*, Prentice-Hall, 1972.

³³⁷ AHMED S., POTTER D. M. 2006, p.11.

fragmented. NGOs appeared on the scene at this important juncture and their success can tell us a lot about the new emergent paradigm. We observe the emergence of transnational relations defined by Risse-Kappen as "regular interactions across national boundaries when at least one actor is a non-state agent or does not operate on behalf of a national government or international organisation"³³⁸. In this sense, non-state agents includes NGOs and also MNCs, epistemic communities of scientists, technical specialists, ethnic diasporas, cross-border terrorist and criminal organisations, etc. In addition Halliday refers to international society as "the emergence of non-state links of economy, political association, culture and ideology that transcend state boundaries and constitute, more or less, a society that goes beyond boundaries"³³⁹. The change in the global situation since the 1990s is well explained by Weiss and Jacobsen:

"The traditional view of the international system as hierarchical and focused almost exclusively on states has evolved into one that is non hierarchical. Effective power is increasingly being organised in a non hierarchical manner. While sovereign states continue as the principal actors, and as the only ones that can levy taxes, and conscript and raise armies, these functions have declined in importance relative to newly important issues, such as environmental protection and sustainable development. There are now many actors in addition to states: intergovernmental organisations, non-governmental organisations, enterprises, other non-state actors, and individuals. Non-state actors are performing increasingly complex tasks, especially in the newer issue areas"³⁴⁰.

Weiss and Jacobsen and others make it clear that NGOs play a role in influencing the international system, thanks in part to the space and vacuum that are opening and developing in IR.

Another approach that emerged from the 1990s is constructivism that helps to explain the NGOs legitimation in international politics. Ahmed and Potter underlined this approach to international politics and argued that "interests, identities, and roles are socially defined. Constructivists criticise the realist assertion that anarchy necessarily creates a self-help security dilemma that drives states into conflict with each other. A key constructivist insight is that the environment - the international system - is not fixed and immutable and therefore does not determine actors' behaviour. Rather, the international system is created through the repeated interactions of states and other actors"³⁴¹. So

³³⁸ RISSE-KAPPEN T. *Bringing transnational relations back in: Non-state actors, domestic structures and international institutions*, Cambridge University Press, 1995.

³³⁹ HALLIDAY F. *Rethinking international relations*, UBC Press, 1994, p.4.

³⁴⁰ JACOBSON H. K., WEISS E. B. *A framework for analysis, Engaging countries: Strengthening compliance with international environmental accords*, Cambridge, MA: MIT Press, 1998, p.3.

³⁴¹ AHMED S., POTTER D. M. 2006, p.13.

here again they highlight the importance of other actors' roles, like NGOs, in the international system. The result is that this international system at any time is composed by the interests and the identities of all the actors, not only the state. So constructivists affirm that states define their relations with others either by competing or cooperating.

Wendt pointed out that "a fundamental principle of constructivist social theory is that people act towards objects, including other actors, on the basis of meanings that the objects have for them. States act differently toward enemies than they do toward friends, because enemies are threatening and friends are not"³⁴².

The constructivist approach considers the possibility that national interests are not fixed but they could shift within the changes of political behaviour. The focus of constructivist analysis is on ideas, norms, epistemic communities and in general the global civil society, the place where we can observe the actions of NGOs. It is for these reasons and in this context that NGOs are allowed to impact the law of the state and possibly change the international system. We must underline again that NGOs normally do not have the same powerful resources of the state: they have not sovereignty; they can't legislate, enter into treaties or use coercive power. However, for whatever they lack, NGOs do have the potential to influence behaviours through their discourse. They could persuade the public opinion by using a wide variety of approaches, as for example with educational activities, in participating to public debates, using the web and other, more traditional media, etc. With the appropriate tools of lobbying and advocacy activities, they try actively to influence politics. In summary, the legitimization of NGOs, on the basis of constructivism and transnationalism, comes from their possibility to influence politics and public opinion with the aim of redefining them.

2.2. NGOs: History and proliferation

In this section we will analyse the emergence of NGOs and their role as non-state actor in IR from a historical perspective. This part of the literature review is useful in order to understand how NGOs could gain legitimacy over time. The visibility they have obtained has contributed to their growth, both numerically and organically, allowing them to gain an active role in political negotiations and in general as an actor in contemporary society. The advent of NGOs is dependent on the historical

³⁴² WENDT A. *Anarchy is what states make of it: the social construction of power politics*, International organization, 1992, pp.391-425.

circumstances that have occurred in different places all over the world: the socio-economic conditions in various countries; the position, the size, the place in the society, the relations with the political world and the state, all have facilitated the expansion of this special type of organisation.

There is a general disagreement among authors on which should be considered as the first NGO. For some authors like Beigbeder, the first NGO had Christian origins and points to the case of *Les Soeurs de la Congrégation de Notre Dame*, founded in Montreal, Canada, in 1653³⁴³. We could say that since the 18th century and the age of Enlightenment, philosophers such as Voltaire and others became increasingly passionate for the concept of 'humanity.' They strongly criticised the way monarchies were responding to catastrophes and natural disasters, for example, the Lisbon earthquake of 1755³⁴⁴ which had repercussions all over the world. Many scholars agree in declaring the 'Abolitionist movement to end slavery' as the prototype of the modern NGO. The movement started in the late 18th century and in 1783 a group of Quakers found the first abolitionist group. At a later time, the official foundation of the "British and Foreign Anti-Slavery Society" (BFASS) was created in 1840. The organisations participating in this movement promoted the "The World Anti-Slavery Convention", which was held in Exeter Hall, London, in 1840³⁴⁵. For this thesis, it is important to underline that the BFASS was able, through an intensive lobbying, to persuade Austria, France, UK, Prussia and Russia to conclude a treaty to fight slavery on the high seas³⁴⁶. Not until much later do we see the foundation of the "International Committee of the Red Cross" (ICRC), established in Geneva in 1863³⁴⁷. This humanitarian organisation was strongly engaged in lobbying governments since the beginning of its foundation³⁴⁸. At the end of the 19th century we can see the development of the Caritas network among Catholic community, which marks the beginning of faith-based organisations³⁴⁹. In 1910 the foundation of the first international union was established which represented more than 137 international bodies and 13 governments. Known as the Union of International Organisations (Union des associations internationales) it was a significant landmark in the development of modern extra-state activities.

Various NGOs were born out of the conflicts of the 20th century. For example in October 1942,

³⁴³ BEIGBEDER Y. *The Role and Statuts of International Humanitarian Volunteers and Organizations: The Right and Duty to Humanitarian Assistance*, Martinus Nijhoff Publishers, 1991, pp.61-100.

³⁴⁴ RYFMAN P. 2007, p.24.

³⁴⁵ WILLIAMS R. O. *Encyclopedia of antislavery and abolition*, Greenwood Publishing Group, 2007, p.760.

³⁴⁶ TURLEY D. *The Culture of English Antislavery, 1780-1860*, Routledge, 2004.

³⁴⁷ FORSYTHE D. P. *The Humanitarians: The International Committee of the Red Cross*, Cambridge University Press, 2005.

³⁴⁸ ICRC, *Statutes of the International Committee of the Red Cross*; accessed on 23/11/2016; www.icrc.org.

³⁴⁹ Others organisations appeared later such as *Catholic Relief Services* (CRS) founded in 1943 in the USA or *Concern* founded in 1968 in Ireland.

during WW2, we observe the foundation of the Oxford Committee for Famine Relief (Oxfam) following an initiative of some citizens and professors from the University of Oxford. They registered in accordance with UK law in 1943. At that moment Greece was occupied by the German army and hunger was widespread because of the Allied naval blockade. The aim of the initiative was to allow humanitarian relief into Greece and the founders successfully lobbied and obtained the permission from the British government to organise a famine relief. Unlike many other humanitarian organisations that concluded their activities at the end of the war, Oxfam continued. Making a new mould, Oxfam's aim and vocation was always international, acting around the world "to help create lasting solutions to the injustice of poverty"³⁵⁰.

As the example of Oxfam suggests, at the beginning of their existence, in an initial phase of their development, NGOs are normally small associations strongly idealist and working with volunteers in small communities. It is often difficult to establish the exact number of NGOs operating globally. This is largely because many countries insist on different types of legal status which make it difficult to catalogue them for comparison. Another difficulty in determining the exact number of NGOs is the fact that some countries cannot provide data or even control their own territory. What is clear, however, is that since from at least the 18th century, NGOs have continued to grow.

2.2.1. NGOs growth in size, visibility and power

Before the beginning of WW1 there were 1,083 NGOs³⁵¹ but this is, of course, a very rough estimate which includes only a few number of countries. However, the onset of WW2 also marked a huge proliferation in NGOs activities. It was in that period of human crisis that the pattern and development of civil society through labour unions, professional associations and other social movements began to spread globally.

Many authors have studied the growth of NGOs in terms of size, visibility and power³⁵². The *Yearbook of International Organisation* edited by the Union of International Organisations is the most important reference in this sense. According to this text, there were 3,733 international NGOs in 1972 and 49,471 in 2003³⁵³. The increase number of NGOs with a granted consultative status at

³⁵⁰ As declared on their website; accessed on 6/5/2016; www.oxfam.org/en/our-purpose-and-beliefs.

³⁵¹ RICHMOND O. P., CAREY H. F. (ed.) *Subcontracting peace: the challenges of the NGO peacebuilding*, Ashgate Publishing, 2005.

³⁵² BENVENUTI P. 1978, pp.84-102.

³⁵³ *Yearbook of International Organizations*, ed. 40, vol. 1B, 1999/2000, appendix 3, p. 2738. According to LEE, INGOs increased from 176 in 1909 to more than 26.000 in 2000. He refers to the Yearbook of IO too. Cf. LEE T. *The rise of international nongovernmental organizations: A top-down or bottom-up explanation?*,

the ECOSOC grew from 41 NGOs in 1948, 377 in 1968, 2,534 in 2004³⁵⁴. Currently there are 4,189 NGOs in active consultative status with ECOSOC³⁵⁵.

For these kinds of organisations, increasing size means increasing legitimacy and, consequently, influence. For NGOs, the access to the decision-making process becomes easy both in developed and developing countries because their role in advocacy grows too³⁵⁶. NGOs also grow qualitatively by creating new issue-areas across new countries and empowering new networks and social linkages.

De Senillosa has an explanation of this growing participation of civil society in public life since the late sixties. He puts the mistrust with and the disenchantment of officialdom as first; the knowledge that some problems "have both a local and a global dimension" as second; and lastly the "declining living standards among large sectors of the North" due to the spread of neo-liberalism together with "the rapid globalisation of the world economy (...) as a consequence of deregulation and privatisation policies"³⁵⁷. Another important explanation concerning the proliferation of INGOs, both in industrialised and in developing countries, come from Lee. He shows how factors such as different levels of economic globalisation; investments, political integration into IOs, technological innovation and internet connections are determinants for INGOs' formation and propagation (top-down perspective). Communication technologies lead NGOs to disseminate information quickly, to perform strategies effectively and to organise international networks easily. In this scenario, carrying out activities such as recruiting members and fundraising is easier, while influencing their own government and garnering public opinion become easier tasks as well³⁵⁸.

Thanks to the rapid development of new communication technologies, NGOs methods are also improved. The media coverage of a major crisis is the basis of major fundraising campaigns that have sometimes taken the form of charitable TV shows³⁵⁹. Moreover, the increased opportunities for funding and the political access to decision-making bodies have facilitated the global spread of INGOs. This is possible because of the political globalisation, or internationalism, that has

Voluntas: International Journal of Voluntary and Nonprofit Organizations, 2010, pp.393-416.

³⁵⁴ LINDBLOM A-K. 2005, p.19.

³⁵⁵ UN DESA *Website of the NGO Branch, Office for ECOSOC Support and Coordination*; www.csonet.org; accessed on 5/5/2016.

³⁵⁶ LEE T. 2010, p.396.

³⁵⁷ DE SENILLOSA I. 1998, p.41.

³⁵⁸ LEE T. 2010, p.401.

³⁵⁹ THIERY P., PERRIN C. *Recouvrement de champs d'activité entre ONG et entreprises: partenariat ou concurrence?*, Entreprises et histoire, 2005, 2: p.78.

facilitated the international political interactions and opportunities through states and intergovernmental organisations like the UN or the WB³⁶⁰. NGOs and other non-state actors have found and taken advantages from the interrelation between nation-states and international institutions³⁶¹.

Other factors explain the exponential growth in size and legitimation of INGOs, such as: the resources coming from UN networking; EU support, and the funds from private donors and foundations. Lee adds that the development of democracy and domestic economy prosperity facilitates INGOs growth (bottom-up perspective)³⁶². Moreover, he adds that the number of INGOs based in a country "is one indicator of the degree to which a country is engaged and integrated into global governance, world culture/polity and global civil society"³⁶³. He adds that some characteristics and the structure of a country, as for example the degree of economic development and the pluralism in the society, are likely to develop more groups composing the civil society. For the author, the proliferation of NGOs is connected to political reality, in particular, a democratic political context is an advantage to provide opportunities for INGOs and others social movements, fostering the development of a strong civil society³⁶⁴. He concludes that "democracy positively affects the level of social capital since democratic governments are more likely to allow the formation of associations and connections to INGOs"³⁶⁵. Another factor that could explain the growth of NGOs in a certain country is the economic prosperity. The rise of the middle class and of post-material values is associated with the financial and political support for INGOs because "high income citizens are more likely to participate in the public arena, INGOs and other associations which support collective actions"³⁶⁶.

As stated earlier, Salomon explains the global factors involved in the evolution of NGOs or "global associational revolution."³⁶⁷: First he underlined the reduced cost and effort of communicating and organising it thanks to the global communication revolution, as explained by Lee and others. A second factor was seen as the retreat of the state worldwide and the power shifts from governments

³⁶⁰ According to TARROW S. *The new transnational activism*, Cambridge University Press, 2005, p.19:

"Globalization, like early liberalism, is a source of interest, ideology, and grievances. It produces the flows and transactions of an interwoven international capitalist economy. Internationalism is the institutional and informal framework within which transnational activism – some of it aimed at globalization but much of it independent of that process – takes shape".

³⁶¹ *Ivi*, pp.16-19.

³⁶² LEE T. 2010, pp.395-397.

³⁶³ *Ivi*, p.396.

³⁶⁴ *Ivi*, p.402.

³⁶⁵ *Ivi*, p.398.

³⁶⁶ *Ivi*, p.403.

³⁶⁷ SALOMON L. 1994, pp.109-122.

to other actors in the society. This process started first in Europe, North America and Japan for several reasons among which the dissatisfaction of citizens to government programmes and the general process of privatisation of services started in the 1980s. In this way NPOs started to carry out welfare functions and to combine their substantial private actions with previous public services. This explains the civil society revival from the 1990s. It is also due to this power-shift from public to private. The process happens in poor countries too, with the failure of the development programmes and the economic stagnation of many countries for decades. Traditional foreign aid programmes and the transfers of economic resources from the former colonies to poor countries, leave space for private organisations like NGOs, financed by new aid channels and private relief efforts alongside official interstate action. Salmon's last reason for explaining the global evolution of NGOs concerns the attitudes of citizens since the general level of economic growth worldwide from the 1960s; the emergence of the middle class with new values like social equity or other post material values shifts the interest to new issues like human rights, environment protection, citizen empowerment, etc. which are typically promoted by NGOs³⁶⁸.

2.2.2. Proliferation of network and alliances

Since local problems often have an origin that goes beyond national borders and therefore require an adequate response (both domestically and on an international level), the operational capacity of NGOs has grown thanks to new networks, alliances and coalitions³⁶⁹. The expansion of NGOs has favoured the proliferation of many types of networks, at different levels, from regional, to national and international.

An international network or a coalition of several NGOs is preceded by its own development at national level, following the organisation and the unification of various national organisations under shared goals and values. The international network and the implantation of a permanent office in one of the lobby-capitals are in fact supported, including financially, by national organisations³⁷⁰. The proportions and the sizes of these networks are variable. They are certainly not comparable to the classical interest groups, especially in terms of budget, although they defend common interests. Their main resource for lobbying is the information. Another important resource is the network

³⁶⁸ *Ibidem*.

³⁶⁹ WEISS T. G. et al. *NGOs, the UN, and global governance*, Lynne Rienner, 1996, pp.25-30;
KECK M., SIKKINK K. *Activists beyond borders: Transnational activist networks in international politics*, Itaca, NY: Cornell University Press, 1998, in AHMED S., POTTER D. M. 2006.

³⁷⁰ BERNY N. *Le lobbying des ONG internationales d'environnement à Bruxelles*, Revue française de science politique, 2008;58(1) pp.97-121.

itself, the set of contacts and the ability to mobilise citizens through national member organisations. The offices dedicated to lobbying at European level generally have a different charter from that of national organisations. This means that the team of employees who are engaged in lobbying activities, have wide autonomy from the affiliated organisations of their networks. The financial resources of the offices of lobbyists often come from various different sources. The international network is partly funded by the subscription of national organisations. Furthermore there are funds coming from public institutions, community and sometimes governmental, or private institutions, such as from foundations³⁷¹. The credibility of the lobby's employees installed in a capital is essential to be effective towards the decision-makers and the national groups that invest in the network. Employees for lobbying have a direct impact on the conditions of cooperation between the network organisations. They set the strategy of action of the network through the organisation of working groups on specific topics. In these contexts, usually employees of the lobby are dealing with the logistical support, while the delegates of national organisations are setting the agenda and other priorities. However there are no fixed rules for the operation of these networks.

The process of globalisation contributes as well to the development of many cooperation networks; North-South, South-South and North-North³⁷². In our specific case study we analyse the cooperation between a North-South network of NGOs, some of which act locally, while others work globally. At the beginning of the research we had noted that "rapidly increasing economic globalisation and its resulting problems provide opportunities for local NGOs to ally with other transnational networks" to fight against corporations, lobbies or international institutions for example the World Trade Organisation (WTO) and the WB³⁷³. In this case NGO networks and coalitions with civil society intervene in opposition to particular interests' groups, governments and corporations because of the negative effects of free trade and investments on human rights and the environment. In terms of effect, NGOs could create transnational advocacy networks for cooperating on a special issue without creating another organisation, avoiding the costs of traditional organisation maintenance. Thanks to transnational network organisations, they are able to concentrate resources on mobilising people for specific activities of short duration.

The possibility for an NGO to work in different fields of activities, in different countries and

³⁷¹ *Ivi*, p.107.

³⁷² DE SENILLOSA I. 1998, quote for example "the NGDO Co-ordinating Committee in Spain, the 'Conseil des ONG d'Appui au Développement' (CONGAD) in Senegal, or the Asian NGO Coalition (ANGOC); North-North umbrella groups, such as CIDSE, EURODAD, or EUROSTEP; North-South umbrella groups, like IRED or ICVA; and South-South umbrella groups such as the Latin American Forum for Debt and Development, or Third World Network, which has offices in Malaysia, Uruguay, and Ghana".

³⁷³ LEE T. 2010, p.399.

developing North-South connections, have a series of advantages: I) allies provide an important exchange of first-hand information and data concerning the political, social, economic and cultural condition; II) with awareness-raising activities they elaborate this information and publicise it among their target groups; III) "the repercussions of decisions taken in the North on the people who live in the South" are the base for lobbying activities³⁷⁴. Moreover, lobbying activity is an opportunity to maintain the original objectives of NGOs, for establishing contacts and forming networks around mutual interests.

According to Clarke, other factors explain the propagation of NGOs network and alliances: first, the flux of financing from non-governmental development agencies based in the industrialised world that channel aid through NGOs partners in the developing world; second, multilateral and bilateral development agencies have done the same, channelled growing amounts of financing through southern NGOs; third, after the economic recession in the 1980s, governments started to recognise and to involve NGOs in their socio-economic programmes, giving the confirmation that NGOs "have become important new political actors in the developing world"³⁷⁵. Moreover, Clarke points out the ideological diversity of NGOs and eventually the political conflict that could be developed. Without entering the debate on the support provided by NGOs to left or right wings movements, we should underline that "NGOs are not only important actors in their own right, but have important institutional vehicles for other actors, such as foreign donors, industrial or agricultural interests, religious groups, or underground movements, in articulating conflicting ideological positions"³⁷⁶.

NGOs have become important political actors throughout the world. They have proliferated, becoming "intermediary institutions that constitute a new layer of civil society, transforming its overall structure" and "have had a significant impact on politics under a variety of regime conditions"³⁷⁷. This process also inevitably contributed to swelling their legitimacy towards public opinion as well as towards the legislator.

2.2.3. NGOs: Areas of activity

NGOs operate in different sectors, carrying out activities on the most varied context depending on where they operate, the needs and possibilities of intervention they identified. De Senillosa wrote

³⁷⁴ DE SENILLOSA I. 1998, pp.47-48.

³⁷⁵ CLARKE G. 1998, p.37.

³⁷⁶ *Ivi*, p.43.

³⁷⁷ *Ivi*, p.52.

about 'Northern non-governmental development organisations' (NGDOs) explaining that they are involved in a range of activities such as: "technical advice (appropriate technology, livestock techniques, management and administration models); the sending of volunteers; the funding of development programmes; development education (including publications and activities aimed at the general public, teachers, and different educational levels); fair trade issues; research and lobbying"³⁷⁸.

This last activity that we will analyse better in the next chapters is very relevant for this thesis. In fact, lobbying is an important part of the law-making process in which NGOs participate in all three phases identified by Mrljić and Lapas. I) The phase of imagination in which NGOs emphasise the importance of international legal regulation through campaigns, educational activities, publication of results of scientific research, propaganda, and other means in order to influence public opinion, as well as the international legislation. II) The phase of standard setting in which NGOs legally participate to the international legislative process if invited by the states or by intergovernmental organisations; in this phase NGOs organise forums, conferences, debates and, if allowed, they submit their statements and proposals. III) The phase of implementation in which NGOs verify and control the implementation of the standards adopted in the previous phase³⁷⁹.

Thanks to the possibility to work in different contexts and regions of the world (and thanks to substantial budget too), some INGOs have become influential and important actors for some questions such as human rights, environment or trade issues. They use to protect the interests and rights of marginalised citizens together with other transnational activists' movements, transnational consumer groups to labour unions. It seems that the most noted NGOs, with larger budgets, have an enormous value in three main domains, that reinforce each other: "the transfer of resources (funds, goods and services), public awareness-raising, and political campaigning"³⁸⁰. Moreover, some of them have played an important political role in improving stability in post-conflicts or transitional countries. In context and sectors where the state is absent, NGOs have provided socio-economic assistance, sustaining political participation and "providing linkages between governments and local communities"³⁸¹. In the developing world, NGOs could play a counter-mobilisation role if their members are not too rooted in political parties and trade unions.

Globally INGOs have the capability to collect and spread information all over the world, often with

³⁷⁸ DE SENILLOSA I. 1998, p.47.

³⁷⁹ MRLJIĆ R., LAPAŠ D. *International Non-Governmental Organizations, "soft law" and protection of environment*, Contemporary Legal & Economic Issues, 2013, p.36.

³⁸⁰ DE SENILLOSA I. 1998, p.47.

³⁸¹ CLARKE G. 1998, p.50.

the aim to mobilise public opinion or in order to support groups that are marginalised by economic globalisation.

2.2.4. NGOs traditional and new role in IR

Historically, the initial focus and commitment of NGOs was towards relief and charity activities. From the 1970s onwards, NGOs started to adopt new strategies and doing other activities as we shall see later. Today this traditional role which sees NGOs working in disaster and famine relief continues to be an important focus of the work of NGOs while their activities are much more multifaceted. Even if until the 1970s the active role of NGOs was concentrated on emergency contexts, other activities also emerged. Since the 16th century the Christian missionary organisations from Europe have been active around the globe associating themselves with relief from famine and relief work with education and introduction to western medicine in other societies³⁸². With the advent of modern organisations and their professionalisation, such as the Red Cross in 1863, Save The Children in 1920, Oxfam in 1942 or Care in 1945, etc. a spectrum of activities have gradually been planned and developed. However, the early work of all these organisations was principally focused on short-term relief, that still remains a key role for NGOs.

However, perhaps from the discontent or frustration at not being able to have an impact on long-term issues, certain factors have led NGOs to broaden the range of their activities which has seen a rise in investment in other areas. Social and economical development begins as a primary activity for many NGOs, in line with a new long-term governmental agenda focused on issues like poverty reduction and fighting economic inequality. For instance in 1973 the US Congress "mandated a 'new directions' approach for US bilateral aid that would focus more directly on the needs of the poorest majority" arguing that this aid should be carried out by the private sector. In other words the development of several areas of the world would be entrusted to organisations or institutions "which already have ties in the developing areas, such as educational institutions, cooperatives, credit unions, and voluntary agencies"³⁸³. Development and relief activities were not perceived as political activities, both by governments and by NGOs supporters. Progressively NGOs started to designate their development objectives in political terms and "at the same time there is a growing realisation that numerous NGOs (both Northern and Southern) engage in a variety of advocacy, lobbying, and agenda-shaping activities, all of which are intended to influence the policies of governments,

³⁸² BASALLA G. *The spread of western science*, Science, 1967, pp.611-622.

³⁸³ AHMED S., POTTER D. M. 2006, pp.40-41.

corporations" etc³⁸⁴. Hundreds of NGOs have started to organise themselves in transnational advocacy networks in order to address specific global problems. Keck and Sikkink help us to define a transnational advocacy network:

"Networks are forms of organisation characterised by voluntary, reciprocal, and horizontal patterns of communication and exchange (...). We call them advocacy networks because advocates plead the causes of others or defend a cause or proposition. Advocacy captures what is unique about these transnational networks: they are organised to promote causes, principled ideas, and norms, and they often involve individuals advocating policy changes that cannot be easily linked to a rationalist understanding of their 'interests'"³⁸⁵.

The power of the networks lies in the capacity to influence international politics "by (I) creating new issues and setting international agendas; (II) changing the discursive positions of international actors; (III) influencing institutional procedures; (IV) promoting policy change in states, Intergovernmental organisation (IGOs), and MNCs; and (V) affecting state behaviour"³⁸⁶.

Lobbying is the other activity close to advocacy whose aim is to influence the decisions of governments and legislators. This activity is made by associations or single individuals or groups coming from the private sector, corporations and government officials or interest groups. NGOs are used to lobby governments on specific causes, in their original country or abroad. Lobbying activity started in the 1970s, thanks to a breakthrough by some NGOs from the North, specialised in worldwide campaigns³⁸⁷. The aim of these campaigns were to: influence private and public decision-making in order to defend their own interest or the interest of the third parties that NGOs defend; rely on a wide social base; claim to hold alternative ideologies or values³⁸⁸. Lobbying activities are often defined and regulated by the government.

Another emerging role of NGOs is education. They commonly began with the education of their own members in order to stimulate public consciousness about their concerns, objectives and scope.

³⁸⁴ *Ivi*, pp.41-42.

³⁸⁵ KECK M., SIKKINK K. 1998, p.43.

³⁸⁶ *Ivi*, p.44.

³⁸⁷ An example is the International Baby Food Action Network (IBFAN) a "public interest groups working around the world to reduce infant and young child morbidity and mortality", founded in 1979 and representing today 273 groups in 168 countries. This network is famous because it gained UN approval of an "International Code of Marketing of Breast milk Substitutes" that prohibits the immoral sales promotion of breast milk substitutes (for example used by Nestlé). Cf. www.ibfan.org; accessed on 21/5/2016.

³⁸⁸ DE SENILLOSA I. 1998, p.42.

In fact, the education of NGO members is very important. As stated by Maran, "NGOs educate members as well as stimulate public consciousness about the concern central to their formation"³⁸⁹. This public education role of NGOs aims to disseminate information for identifying and politicising an issue in order to influence political agendas. NGOs usually educate each other or repeat similar initiatives in different countries. The same issue could have causes or effects in several places and public opinion needs to be informed.

To summarise the goal of advocacy and lobbying activities, we can see the focus is to influence the agenda-setting process. The importance of problem solving on the political agenda is decisive for NGOs. As Kingdon points out, "at some point problems and proposals for their solution get onto the political agenda because someone in government picks up those problems and/or their solutions and attempts to deal with them"³⁹⁰. If NGOs advocate certain issues to policy-makers through the agenda setting, they will, at least, pay attention to them. So the aim of agenda-setting activities is to persuade the public and politicians to view and treat some problems in a new way. Crucially, the task for NGOs is therefore to suggest ideas and guidelines to resolve key problems, by informing the public and encouraging them to change the behaviour of their representatives. For an NGO with the aim of influencing the global decision-making arena, it is necessary to attend conferences and present information to UN or EU agencies, to specific commissions or field offices. Some of these institutions provide regular NGOs consultation meetings and "often NGOs play a leading role in promoting the various dedications of 'days', 'years', and 'decades' that the UN system regularly proclaims"³⁹¹.

Lobbying and advocacy activities, carried out by several NGOs, should be not confused with the job of think-tank NGOs. These organisations are specialised in collecting information, research, analysis of public policy and strategies, generally acting independently from political movements. They work on different issues, sometimes on cross-national problems, both in domestic and international policy analysis. Their services are required by governments, IOs, corporations and NGOs that do not have the structure or financial possibilities to perform this function.

An important role some NGOs are taking on is the monitoring of other transnational actors. This activity includes the work of controlling the legislation that states have signed, for example an

³⁸⁹ MARAN R. *The Role of Non-Governmental Organisations*, Duffner B.(ed.), 1998 in DUNER B. *An end to Torture: Strategies for its Eradication*, 1998, in AHMED S., POTTER D. M. 2006, p.46.

³⁹⁰ KINGDON J. W. *Agendas, alternatives, and public policies*, Longman Pub Group, 2003 in AHMED S., POTTER D. M. 2006, p.48.

³⁹¹ AHMED S., POTTER D. M. 2006, p.53.

international treaty. In this way NGOs can operate outside the logic of the state in order to be neutral and plausible. In this monitoring activity it is important to remember the supervision on MNCs and IGOs, towards which several demands of transparency and accountability have been made. The activity of monitoring other transnational actors has represented a fundamental key role for some NGOs that have convinced MNCs and industry associations "to develop corporate codes of conduct that commit multinationals to appropriate environmental practices and equitable treatment of workers in developing countries"³⁹².

2.3. NGOs and state interaction'

In the majority of countries, an NGO could not operate without government permission. The starting point of every NGO activity is an agreement with the authorities. This underlines the fact that the state remains the basic actor in IR. Consequently, "like it or not, NGOs must live with and operate within a system established by and for the interests of sovereign, territorial states"³⁹³. Accordingly, the sovereign state remains the primary player that could allow, or not, an NGO to operate in its territory. It is clear that non-state actors should observe and operate within the system and within its rules, which have been largely made to preserve its own interests. As we should not afford the time to analyse all the different laws in force in states, we will summarise four modes of interaction proposed by Ahmed and Potter: "NGOs in states, NGOs as collaborators with states, NGOs as opponents of states, and NGOs as substitutes for states"³⁹⁴.

In the first case, NGOs in states, we assume that the work of NGOs and their impact strongly depend on the law of the state where it resides and operates. As already mentioned, NGOs do not enjoy any special international legal-status valid in all countries that protect their staff and activities. This means that even if the government recognises the right of existence of a non-state actor, official policies could limit or ban the work of some organisations. This happens in many countries, from the People's Republic of China to Burma. Most countries require organisations to register and declare all the activities they intend to carry out. In this way the state could investigate and eventually prevent activities or projects they do not want in their country, as agency approval is not necessarily automatic. This problem is not limited to NGOs, which could be eventually registered within another denomination and also applies to the broader non-profit sector. Governments have multiple options to limit the operational potential of NGOs and can block

³⁹² *Ivi*, p.52.

³⁹³ *Ivi*, p.57.

³⁹⁴ *Ivi*, p.58.

activities by limiting their funds. In other cases the state could forbid non-profits organisations to engage in political activity, as happens in Japan or USA.

As the definition of political action is ambiguous and questionable, once again it serves to underline the fact that the state remains the strongest player. Some other government could prohibit NGOs based in their country to set activities in third countries with which there are diplomatic conflicts or if these countries are under authoritarian rule. In summary, INGOs have to follow and comply with different laws, depending on the state in which they operate. And things get more complicated in the case of projects involving several countries, in border areas for example, where the offices for dealing with bureaucracy could be thousands of kilometres away.

The second case which looks at "NGOs as collaborators with states", concerns many of the countries in the world. It seems that cooperation is preferred by many state agencies because of NGOs capability to implement government's official policies. Sometimes NGOs are much more efficient at dealing with activities that the government does not do or because they have large and dedicated budgets or because they are closer to the target populations, etc. Both actors are interested in collaboration: for NGOs it helps to increase legitimacy; where they operate and where they get funds, subsidies and grants. For states, collaboration is convenient if they need mediation with the population: NGOs also provide public welfare services and promote development goals. Cooperation could be extended to the international level, in the case where a member of an NGO is invited by a government to bring its expertise in international negotiations. Eventually NGOs could facilitate communication between two governments that have not formal relations, serving as an informal channel.

As underlined by Clark, certain factors are more important than others in facilitating the development of good relations between states and NGOs. First of all, it is necessary to secure the will of both parties, something that is not always possible. The actors are sometimes suspicious and they are afraid of mutual interferences. Major problems may arise between the two actors in case of conflicting positions or intents. Secondly, a state must assure a certain level of good governance and regulation that allows civil society and NGOs to operate with official agencies. Third, the state should encourage public debate on important issues and in the formulation of policy. In conclusion, states should gain confidence over time with NGOs in order to develop practical working relationships and foster healthy cooperation³⁹⁵.

³⁹⁵ CLARK A. M. *Non-governmental organizations and their influence on international society*, Journal of

The misunderstandings and problems related to cooperation can arise for various reasons, among them, the desire of the state to control and dominate all the actors, including NGOs; the lack of confidence of NGOs in the state and the fear of losing their independence, the lack of competence from state agencies, the lack of flexibility to adapt to certain circumstances from both actors and in the difference in operating style that can hamper effective cooperation³⁹⁶.

The third mode of interaction between states and NGOs is characterised by "NGOs as opponents of states". In this case NGOs may not want to cooperate with the government in place. This happens when the two actors come into a conflict on sensitive areas about which they have directly opposed opinions, which is often the case with human rights. "Many non-state actors define their political role as watchdogs over state actions" and so the conflict often occurs for those organisations that exist to denounce certain policies of the state³⁹⁷. When governments feel threatened by the activities of NGOs, they sometimes resort to the notion of sovereignty accusing the international actors of interference in the internal affairs of the country, which is a very good excuse to drive them out.

The final mode of interaction between states and NGOs is "NGOs as substitutes for states". Sometimes it happens that the NGOs replace state agencies simply because the latter are non-existent. This case occurs, for example, during armed conflicts or complex political emergencies. In such cases the authority of the state may be extremely limited or even absent and some parts of society are totally disconnected or ignored by the state.

To sum up, when observing the relationships between states and NGOs, it is necessary to remember that the state always has priority over NGOs. "They do not carry official credentials unless states provide them that privilege when they accompany official delegations. They do not enjoy diplomatic immunity. They may represent new actors in international politics, but they are not classed as equals with their diplomatic counterparts because they do represent sovereign entities. Their treaties have no binding effect on law, domestic or international. Unlike states, NGOs are not subjects of international law. They may not accede to treaties, nor may they opt out of them in any legal sense. Observer status at the UN is not the same as member status"³⁹⁸.

In conclusion, relations with states are different depending on the context; the objectives of the

international affairs, 1995, pp.507-525.

³⁹⁶ AHMED S., POTTER D. M. 2006, p.64.

³⁹⁷ *Ivi*, p.65.

³⁹⁸ *Ivi*, p.70.

NGO, the state government in which NGOs operate, and also the circumstances that could change in different ways and times. The same NGO could adopt different approach depending on the place in which it operates and can always adapt or change its modus operandi.

2.4. NGOs and IGOs

The structure of IGOs, their mode of operation and working principles reflect the will of governments. They are another expression of the power of the state and further underlines the centrality of the state in IR. This is because IGOs are established by international treaties that are expressions of the government's will and reflect the interests of nation-states. In the case of the development bank, like the WB, MSs are also customers. This means that the bank directly represents some of the financial interests of the state. If IGOs represent the interest of nation-states, NGOs represent non-state actors. NGOs and IGOs have grown simultaneously over the last half century. INGOs in particular have boosted relations with IGOs as they now represent the partners for the development of their activities. As underlined by Ahmed and Potter "this trend is an important confirmation of the transnational approach to IR because significant transactions take place between two kinds of non-state actors. Cooperation with IGOs affords NGOs a number of critical resources, including access to organisations with global reach, venues for NGO public education and advocacy, and access to expertise"³⁹⁹. It is thanks to this cooperation that IGOs have noted the importance of NGOs. If some IGOs have been more receptive to develop interactions and partnerships with NGOs, others have been slower in developing a dialogue. The participation of NGOs is different depending on the IGOs. We can observe that despite the willingness to work together, sometimes problems may remain, partially due to the internal organisation of non-state actors, different constituencies or the difference of views on certain issues. Hereafter we will analyse the interaction between NGOs and IGOs such as the UN and the WB, as they have been particularly interesting and also because they represent the potential and the limits of mutual collaboration.

Today there are around 110 IGOs, the vast majority of which were all founded after 1940⁴⁰⁰. However, by the end of WW1, the League of Nations in 1919 had established a permanent forum for communication between IGOs and NGOs. Several informal contacts were established for example between the League of Nations, the women's IOs and others relief NGOs. The ICRC was

³⁹⁹ Ivi, p.93.

⁴⁰⁰ ROURKE J. T., BOYER M. A. *World politics: International politics on the world stage, brief*, McGraw-Hill College, 2000.

also engaged in agenda setting on the question of refugees. However, it was only after the war that they both started to develop new trends. Since the end of WW2, IGOs and NGOs have spectacularly grown in terms of size and in number and their interactions have also multiplied. Evidently, relations have been developed in different ways depending on the IGO.

Surely the IGO that has most represented the spirit of this cooperation has been the UN. In fact, the UN is considered as a model for other IGOs for having developed the longest relationships with NGOs. This has happened as a result of Article 71 of the UN charter which formalised the interactions between NGOs and the ECOSOC. Relationships have consequently been developed and reinforced since 1945. The consultative status at the UN has allowed NGOs to propose agenda items; to send observers to the meetings, to submit brief written statements, to attend hearings and major conferences, including those convened by ECOSOC and by the General Assembly. Today the participation of NGOs in the UN has grown significantly. The strategy of permeating the IGO once again demonstrates an increase of legitimacy obtained by NGOs.

A second important IGO that has relationships with NGOs is the WB. The WB started to get involved with NGOs in the 1970's, without developing any official policy or forum until 1989. Since that date the WB has adopted an Operational Directive in order to encourage NGOs involvement in the projects of the bank. The WB does not finance directly NGOs projects but encourages governments to consult with them and involves NGOs in the operations they support⁴⁰¹. From 1994 this cooperation has included a small grant program to support NGOs projects; the NGO-WB Committee which includes representatives from NGOs from around the world and dialogue on WB policies. Since 1997 the Structural Adjustment Participatory Review Initiative includes NGOs both as members of the steering committee and as review participants⁴⁰². The bank distinguishes two types of NGOs: operational organisation, which is focused on relief and development activities; advocacy organisation, which is focused on agenda setting and public education.

The relationship between NGOs and the WB is also a strategy of legitimization, even though many large NGOs, by their choice, do not have relations with this institution. Indeed, the relations between NGOs and the WB have been both collaborative and conflictual. Various NGOs have opposed the policies of the WB, especially those oriented towards structural adjustments, as deemed

⁴⁰¹ GIBBS C., KUBY T., FUMO C. *Nongovernmental organizations in World Bank-supported projects: a review*, World Bank Publications, 1999.

⁴⁰² AHMED S., POTTER D. M. 2006, p.80.

anti-poor by NGOs, who have seen the results of these policies directly on local communities with whom they have worked. In fact, strong criticism by NGOs was one of the initial reasons for which the WB accepted their participation. This is different to the case of the WTO, successor of the General Agreement on Tariffs and Trade (GATT). It was founded in 1995 accepted NGO participation the following year. This IGO was heavily criticised and consequently decided to allow NGOs to participate in plenary sessions and ministerial conferences if they are concerned with the same matters. The WTO secretariat has initiated brief daily contact with NGOs during conferences and the publication of papers on the WTO's website. Other IGOs recognise NGOs without allowing direct interaction with them or by establishing ad hoc interaction.

The methods of interaction between IGOs and NGOs are not mandatory like the relationship between NGOs and states. This means that they could simply neglect each other and, as IGOs are not sovereign, they cannot force NGOs to obey laws or regulations as governments can and do. Relations could range from total cooperation to open conflict. In general, project-oriented operational organisations tend to collaborate. On the contrary, advocacy organisations tend to come into conflict.

When the NGOs are participating in the IGOs policy making process, they usually have three possibilities: I) agenda setting; II) policy formulation; and III) policy implementation.

In the first case, I) agenda setting, the IGOs are conformist and status quo oriented and they are responsible to the nation-states first and foremost. Consequently, it is up to the NGOs and their ability to promote the mobilisation on topics and issues that are not current and not considered as relevant by governments. At this juncture, NGOs should seek to influence the agenda setting through the dissemination of information and reports, seeking media attention, mobilising the militants and exercising their lobbying activity. In this case the advantage of NGOs is that they are considered neutral and expert in the specific topics they deal with.

In the second case, II) policy formulation, NGOs are seen as a reservoir that provides regular contribution in furnishing information, ideas and advice. They could mobilise public opinion for or against a draft policy and thereby exert pressure on governments. NGOs may already be involved with IGOs in presenting their point of view and in the observation of some political process (for example few NGOs became observers in the UN General Assembly).

In the third case, III) policy implementation, NGOs are involved through their participation with

IGOs in shaping implementation and the development of different programs. NGOs monitor different treaties and policies of the UN and can denounce members when these agreements are not respected. NGOs also implement policies when development and relief agencies ask them to cooperate within their fields of expertise⁴⁰³.

Another occasion to collaborate is during the UN-sponsored conferences and NGO forums. Here NGOs participate actively from the initial preparatory phases, submitting information, to preparing reports, draft resolutions and various requests as well as offering other suggestions. NGOs also organise unofficial conferences, seminars, forums, panels, films projections, field trips in order to persuade their interlocutors towards their position. During these events organised by IGOs, NGOs have the opportunity to be close to journalists, diplomats, representatives of other organisations and have the potential to influence them. It would be impossible for NGOs to organise events in the same way that a major IGO can and yet it is in these events that NGOs are used to operating in and can do their best in order to achieve their goals⁴⁰⁴.

The participation of NGOs in policy implementation is also evident inside the global policy networks that put together several actors "around a specific technical issue that transcends national boundaries, such as malaria control, agricultural research, water resources management, or dam construction. These networks have the advantage of pooling expertise from a wide array of actors"⁴⁰⁵. As IGOs pull together many actors for the occasion of policy formulation and discussion, the results should normally reflect a most varied and complete view of the issues.

2.5. Arguments and change for NGOs lobbying and advocacy activities

This next section will help us get closer to defining and explaining the concepts of lobbying and advocacy that characterise the daily work of the NGOs we have identified for our case study. As we will see, the particular work of NGOs can be characterised by the process and formulation of the argument, which is based on researches; on relationships with other actors and, on scientific and ethical beliefs. Arguments are one of the ways for an NGO to bring about change according to their own will and position.

In IR scholars are used to explain two generic social conditions: order and change. If theorists have

⁴⁰³ AHMED S., POTTER D. M. 2006.

⁴⁰⁴ BOLI J., THOMAS G. M. *Constructing world culture: International nongovernmental organizations since 1875*, Stanford University Press, 1999.

⁴⁰⁵ AHMED S., POTTER D. M. 2006, p.86.

explored a lot of stable aspects of world order, much less they have analysed significant changes. Many scholars have focused on the actors (or agents), structures (states and alliances) and processes. However the role of the processes, like argument and persuasion, has not been extensively addressed. This could be useful to understand how changes may occur.

According to Crawford "once we pay attention to political argument, we will see the role the making and persuasiveness of arguments plays in maintaining orders, changing relations, and overturning practices"⁴⁰⁶. Crawford also writes that "ethical arguments are about what is right to do in particular contexts"⁴⁰⁷. A strong ethical argument could support the order of the status quo, just as well as it could promote the change and the adoption of new practices. However, the role of argument formulation in general has not been specifically developed, despite it being a crucial concept.

In order to understand changes in world politics it is essential to analyse the content of arguments. Indeed it is necessary to have good arguments to help individuals and groups to decide what to do. The objective of good argument is to rise above the spectrum of other arguments that occur in policy decision making. According to Crawford's definition, "arguments are an effort to persuade others to see the world in a particular way and to act in accordance with the conclusion that follows from the argument"⁴⁰⁸. In this sense, we may categorise the arguments of NGOs as 'political' specifically because of their form of persuasion and intersubjective reasoning. The persuasion of an argument usually meets with pre-existing beliefs and arguments of different groups (or another party). The goal of a persuasive political argument is to influence private reasoning and affect a group's choice through lobbying and advocacy activities.

When considering how arguments are formulated it is also necessary to consider the content of a good political argument. Crawford classified "four ideal-type categories that vary in terms of their content: practical/instrumental, ethical, scientific and identity"⁴⁰⁹. These types of arguments are strictly connected to the culture of certain groups or individuals and should affect national groups or individuals identity in order to be persuasive. In fact, if NGOs want to be efficient with their political arguments, they should make an argument while considering the context, the cultural background and the historical experience of their audience. Furthermore, as Dyson wrote "concept

⁴⁰⁶ CRAWFORD N. *Argument and change in world politics: ethics, decolonization, and humanitarian intervention*, Cambridge University Press, 2002, p.2.

⁴⁰⁷ *Ivi*, p.6.

⁴⁰⁸ *Ivi*, p.14.

⁴⁰⁹ *Ivi*, p.23.

and contexts are inseparable. Language is a part of the social and political structure; it reveals the politics of a society"⁴¹⁰.

In world politics many actors are used to making political arguments. These actors include: official and unofficial representatives of governments; international courts, commissions and the resolution-making bodies of IOs, transnational movements, members of the press and intellectuals who write opinions about policies as well as NGOs who want to influence the political agenda⁴¹¹. As we have already argued, NGOs seek an impact on politics with their lobbying and advocacy activities. It is during this phase that they must maximise the use of a good ethical argument in order to promote the change.

Furthermore, if we accept that "argumentation and persuasion depend on content or beliefs"⁴¹², then in order to fully understand the argumentative process we must also consider the role of culture as a factor. This is necessary because culture is shaped by a tangled mix of beliefs and content and also a source of new beliefs which all impact on the formulation of a good argument.

2.5.1. Advocacy and NGOs

The Latin dictionary translates the term advocacy as 'advoco' and means: to call; to vouch for; to justify and act done; to avow⁴¹³. A simple but efficient definition comes from Reid. She describes advocacy as "a wide range of individual and collective expression or action on a cause, idea or policy. It may also refer to specific activities or organisations. Sometimes a distinction is made between advocacy on behalf of others and grassroots advocacy or civic and political participation. The word is often modified to describe the venue for political action"⁴¹⁴. So we can talk about advocacy if we referred to "an activity by an individual or group which aims to influence decisions within political, economic, and social systems and institutions"⁴¹⁵. This activity is directed toward an individual or a group with the aim to impact a decision.

Further on, in analysing the existing literature, we came to realise that there is no agreement upon which activities constitute advocacy, as well as the practice and the scope. Nor was there an

⁴¹⁰ Ivi, p.27.

⁴¹¹ Ivi, p.29.

⁴¹² Ivi, p.6.

⁴¹³ CASTIGLIONI L., MARIOTTI S. *Vocabolario della lingua latina*, Loescher, 2007.

⁴¹⁴ REID E. *Understanding the word "advocacy": Context and use*, In E. Reid (Ed.), *Structuring the Inquiry into Advocacy*, Nonprofit Advocacy and the Policy Process: A Seminar Series, Vol.1, 2000, p.1.

⁴¹⁵ BRUGADA J. *Advocacy and networking. Why it is so important?*, presentation EHRA Summit 2017.

exhaustive list of the activities and strategies that are being used by groups to exert influence in the political process. However we can identify a number of strategies and actions that organisations consider advocacy.

Ailenei, for example, says that in modern politics, we could talk about advocacy when promoting "strategies that focus on several fronts, among which: I) informing those that conceive public policies (e.g. distribution of brochures or leaflets); II) creation of coalitions by mobilising colleagues, academics, getting support from institutions, organisations, associations or groups; III) increasing the visibility through the mass media; IV) if needed, the initiation of legal proceedings, and the final stage; V) community mobilisation in order to emphasise their points of view"⁴¹⁶.

Another contribution comes from the organisation COD, who wrote that advocacy is used by an organisation to "achieve its political goals whatever they may be, including: improving public services such as transportation, information, etc.; education; accessibility; development of community based services; public health; greater accountability of elected representatives of local and national authorities; decentralisation of government decision-making process and public services; new laws that better protect the civil rights associations, including the legal recognition and other civil society organisations"⁴¹⁷. The aim of these activities is to change policies, practices and attitudes.

Reid expands this point to argue that "advocacy activities can include public education (...) influencing public opinion; research for interpreting problems and suggesting preferred solutions; constituent action and public mobilisations; agenda setting and policy design; lobbying; policy implementation, monitoring, and feedback; and election-related activity"⁴¹⁸.

Throughout the research, a cardinal point in the activities of advocacy is the capacity to motivate and mobilise the community, in order to draw "attention to an important issue and direct decision-makers to a solution"⁴¹⁹. The ability to include people in the activities of an organisation, asking for support and fight for a common goal is a key point: it expands the base of support and could convince "others that this issue is important for them as well"⁴²⁰.

⁴¹⁶ AILENEI S. G. *Relationship between influence trafficking, lobbying and advocacy*, Acta Universitatis George Bacovia (Juridica), 2016.

⁴¹⁷ COD - Centar za Orijentaciju Društva - Center for Society Orientation, *Advocacy and Lobbying*, 2013; accessed on 28/8/2017; www.cod.rs.

⁴¹⁸ REID E. 2000, p.1.

⁴¹⁹ COD, 2013.

⁴²⁰ *Ibidem*.

During the last ten-twenty years, for motivating and mobilising the community, as well as for accomplishing the goals of the organisations, the increased use of the internet, especially social media, has had a huge impact. Ideas, actions, tactics, plans, protests can quickly spread across the web to thousands or millions of people. The impact on policymakers could be much more immediate: temporal or spatial limits are relative because public accessibility is potentially much larger. The main problem regarding the internet concerns the reliability of the sources⁴²¹.

In order to achieve their objectives, as we will see later on this dissertation, groups, associations or NGOs could act in different ways. Some of them "have specific organisational structures and decision-making processes to accommodate their political affairs; others join coalitions or policy networks to increase their capacity to advocate effectively"⁴²². Coalitions and networks are also useful to rationalise resources. In fact it happens that small organisations do not have financial and material capabilities to plan a decisive and widely distributed action. In other cases, small organisations, alone, would not have a chance to succeed when competing with large groups of interest and power.

Some authors separate advocacy actions in a double significance: direct and indirect. In fact, some studies distinguish between these two ways of working. They describe direct advocacy when there is a lobbying action organised by decision-makers through organisations that represent a group of interests. They describe indirect advocacy as when organisations act to stimulate and mobilise groups of citizens in order to achieve their mutual demands⁴²³.

The influence on decision-makers can occur at all levels. The goal is always to draw attention to a particular issue or problem and to direct decision makers towards a solution. However, it is important to point out that results of advocacy activities are not always immediate. Sometimes the process of change demands time, involvement and even then may not bring an organisation to any concrete results.

Another problem is that even if it is true that many organisations carry out efficient advocacy actions, it is not always the case that they are entitled to do so. This point is clearly expressed by Reid, who points out that "when advocacy is viewed as representation of interests, values, or

⁴²¹ AYRES J. M. *From the streets to the Internet: The cyber-diffusion of contention*, The Annals of the American Academy of Political and Social Science, 1999, pp.132-143.

⁴²² REID E. 2000, p.2.

⁴²³ MCCARTHY J., CASTELLI J. *Studying advocacy in the nonprofit sector: Refocusing the agenda*, In: Independent Sector Spring Forum, 1996.

preferences, questions may arise about the legitimacy of organizations to represent us"⁴²⁴. In our case of NGOs advocacy, legitimation is a strategy constructed inside the society over a long time: the same society could attribute an association by credible and efficient actors and stakeholders⁴²⁵. In this manner an NGO could raise its influence through advocacy network and campaigns, promoting successfully its point of view.

2.5.2. Lobbying and NGOs

If we look into the English dictionary, we state that lobbying is "the activity of trying to persuade someone in authority, usually an elected member of a government, to support laws or rules that give your organisation or industry an advantage"⁴²⁶.

Susman explains that "many nongovernmental organisations take an interest in politics, government, and lobbying and help monitor, analyse, disclose, and advocate issues relating to lobbying"⁴²⁷. Known also as persuasion, or interest representation, lobbying is the part of advocacy activity that attempt to influence decisions or policies of decision-makers. Normally this activity is led by a professional, as it represents a delicate task that should be very well conceived.

Reviewing the literature, we ascertain that, as in the case of advocacy, there is not a unanimous definition. A widely used definition comes from Milbrath, when he describes lobbying as "the stimulation and transmission of communications, by someone other than a citizen acting on his own behalf, directed to a governmental decision-maker with the hope of influencing his decision"⁴²⁸. OECD completes this definition explaining that "lobbying can be an effort to influence different levels of government (judicial, legislative or executive). It can be carried out by many different actors with very different objectives, such as corporate lobbyists, contract lobbyists, not-for-profit lobbyists, public relations professionals and even governments attempting to influence each other".

Generally speaking, the person who provides "lobbying services" is called the lobbyist and in many cases must be registered to the authorities in a register of lobbyists, as in the case, for example, of

⁴²⁴ REID E. 2000, p.3.

⁴²⁵ HUDSON A. *NGOs' transnational advocacy networks: from 'legitimacy' to 'political responsibility'?*, Global networks, 2001, pp.331-352.

⁴²⁶ *Cambridge Business English Dictionary*, Cambridge University Press, 2011.

⁴²⁷ SUSMAN T. M. *Lobbying in the 21st century - Reciprocity and the need for reform*, Administrative Law Review 58, no. 4, 2006, p.744.

⁴²⁸ MILBRATH L. W. *The Washington Lobbyists*, Randy McNally, Chicago, 1963.

the EU or other governments⁴²⁹. This demonstrates that today the lobbyist is considered as a profession in all respects: they have developed their trade associations and their code of ethics "as a model by various organisations and serves to strengthen" their image and enhance their "role as a vital and respected link in the democratic process"⁴³⁰.

The OECD specify that "some lobbyists may carry out lobbying activities as incidental to other activities, such as lawyers pursuing the legal interests of their clients or political activists attempting to influence elections".

As in the case of advocacy, we should distinguish between direct and indirect lobbying. In the first case the contacts with government officials are straightforward; in the second case, also called 'grassroots lobbying', appeals are directed to the general public to put pressure and influence governmental decisions⁴³¹.

According to the analysis of Ailenei, "the goal of lobby is circumscribed only to the activity of influencing just those with responsibilities in the legislative branch legislators and members of their teams, provided it relates and reflects a point of view on a particular regulatory act. If the communication implies the public contributions, then it must be followed by a 'call to action'. This call to action is an important detail because a public debate on the issues of law cannot be considered lobbying, as long as such a request has not been made"⁴³².

2.5.2.1. Strategies, characteristics and principles

Strategies for achieving the goals of a lobbying are multiple. The most three common tactics or activities are identified in a working paper edited by the EP. The first technique is the "communication between lobbyist and governmental officials; these include private, personal representations before people in government; testifying before congressional committees; and formal legal action, such as litigation and interference with administrative proceedings"; a second manner includes the constituents of a lobby which is stimulated to act toward their own government, for example, in writing letters for those participating in protest demonstrations or

⁴²⁹ Such as the UK, Cf. CIPR Public Relations Centre, *Proposed definition of lobbying*, London; www.cipr.co.uk.

⁴³⁰ American League of Lobbyists (ALL), Code of Ethics, 2010; accessed on 31/8/2017; www.doa.alaska.gov/apoc/pdf/LobbyistCodeOfEthics.pdf.

⁴³¹ OECD *Lobbyists, Governments and Public Trust, Volume 2: Promoting Integrity through Self-regulation*, OECD Publishing, Paris, 2012, pp.22-23.

⁴³² AILENEI S. G. 2016.

where a lobbyist "may ask individual, but highly influential, members or constituents to contact a key policy maker". A third possibility occurs when "groups may try to change governmental policy by influencing elections or altering public opinion; techniques of this sort are contributing money to political campaigns, publishing voting records, releasing research results, and public relations campaigns"⁴³³.

A common characteristic of lobbying and advocacy activities is the fact "that these are undertakings that must be made in a transparent manner, which require the involvement of a large number of people and which distinguish themselves due to the fact they are directed against certain acts or ways of implementing public policies or programs of general interest"⁴³⁴.

If partly there is still some reticence in accepting the lobbying activity by public opinion, more and more this activity is a necessary supplement of the democratic process. This is due to the fact that "it enables or facilitates citizens and organisations to make their views on public policy and public services known to politicians and public servants". In addition they "provide useful information and expertise to government officials on any given matter", transferring "into understandable terms everything from scientific data to public opinions"⁴³⁵. Furthermore "there are now more women, minorities, and young people engaged in lobbying" representing public interest and popular causes⁴³⁶.

However, concerns on the power of some groups toward governments should also be considered, in order to prevent special interests from wielding overly strong influence. For these reasons some observers help to pinpoint 'good lobbying' from 'bad lobbying' by introducing some principles of ethical behaviour for lobbyists.

These principles are as follows: "I) The lobbyist-client relationship must be based on candour and mutual respect. II) The pursuit of lobbying must take into account the common good, not merely a particular client's interest narrowly considered. III) A policymaker is entitled to expect candid disclosure from the lobbyist, including accurate and reliable information about the identity of the client and the nature and implications of the issues. IV) In dealing with other shapers of public

⁴³³ EU Directorate-General for Research, *Lobbying in the European Union: current rules and practices*, Constitutional Affairs Series, AFCO 104 EN, 2003, p.17.

⁴³⁴ AILENEI S. G. 2016.

⁴³⁵ Public Relations Institute of Ireland (PRII), *Summary of the main provisions of the Regulation of Lobbying Act 2015*, 2016; accessed on 28/8/2017; www.lobbying.ie.

⁴³⁶ SUSMAN T. M. 2006, p.742.

opinion, the lobbyist may not conceal or misrepresent the identity of the client or other pertinent facts. V) The lobbyist must avoid conflicts of interest. VI) Certain tactics are inappropriate in pursuing a lobbyist agreement. VII) The lobbyist has an obligation to promote the integrity of the lobbying profession and public understanding of the lobbying process"⁴³⁷.

We should underline that in practice, these principles are sometimes questionable, for example, when it is difficult to define in legislation, the concept of 'common good'.

As we have affirmed in the first part, lobbying is a delicate task, largely because it could easily move into a corrupt activity. This happens if something of value is offered to a public official in exchange for a favour. Bribes are the most illegal form of corruption, but a lobbyist could find more subtle and not necessarily illegal ways to achieve a goal. Susman, for instance, has warned about the principle of reciprocity: starting from clinical studies on human nature he has affirmed that "both legislators and the public deserve some defence against the power of the reciprocity principle"⁴³⁸. This sense of obligation could be instigated from a lobbyist employing gifts: meals, travels, entertainment and other. In this way the 'receiving' person will feel the duty to 'return' the favour.

Suggestions from Susman to prevent the reciprocity principle are: I) more transparency in the lobbying activity, for example disclosing the lobbying expenditures, drawing clearer lines "between those who pay and those who lobby"; II) "instituting a near-zero tolerance" for any kind of benefit paid by lobbyist and their employers; III) "to level the playing field and equalise access to those" inside institutions; IV) "insist on an enforcement regime that carries consequences for both lobbyists and legislators"⁴³⁹. In the article of Susman these recommendations are formulated with the intention of restoring public trust in government. He concluded his analysis pointing out that "most lobbyists understand government, love politics, respect our institutions of government, and benefit from the very forces that characterise democracy. We may not be the primary cause, but we certainly share the responsibility for how things became the way they are. And we thus share the responsibility to work towards improving the processes and institutions that we know, and often exploit, so well"⁴⁴⁰.

⁴³⁷ OECD 2012, pp.27-28.

⁴³⁸ SUSMAN T. M. 2006, p.749.

⁴³⁹ *Ivi*, pp.747-750.

⁴⁴⁰ *Ivi*, p.751.

2.5.2.2. EU rules for lobbying

We will now focus on the EU context, in which the NGOs we will consider in this thesis operate. The EU institutions have stipulated an agreement in order to have their "Transparency Register and self-employed individuals engaged in EU policy-making and policy-implementation"⁴⁴¹. This agreement has been signed between the EP and the EC. EU Institutions have adopted the 'Transparency Register' because they are persuaded that decisions that affect millions of citizens, should be taken as openly as possible. For these reasons they search the feedback of a "wide range of groups and organisations representing specific interests"⁴⁴². The idea of the Institutions is to implement a more transparent decision-making process and better represent the citizens' need. The register "is managed by the Joint Transparency Register Secretariat (JTRS) comprising staff from Parliament and the Commission". It has several key features, some of them recommended in the analysis of Susman: I) a public website which includes a list of the organisations "representing particular interests at EU level register and up-to-date information about those interests"; II) "a code of conduct governing relations of interest representatives with the EU institutions"; this should help to develop a healthy competition among actors with different or opposed interests, since it establishes the same rules for all; III) "alerts and complaints mechanism to enable anyone to trigger an administrative inquiry into information contained in the Register or suspected breaches of the Code by registered organisations or individuals"⁴⁴³; all of this should be useful to deter infringements.

Also this EU institutional agreement distinguishes between direct and indirect lobbying. At point 7, "activities covered", it specifies that "'directly influencing' means influencing by way of a direct contact or communication with the EU institutions or other action following up on such activities and 'indirectly influencing' means influencing through the use of intermediate vectors such as media, public opinion, conferences or social events, targeting the EU institutions"⁴⁴⁴.

Some activities are permitted for registered organisations: these are for example "contacting Members and their assistants, officials or other staff of the EU institutions; preparing, circulating and communicating letters, information material or discussion papers and position papers;

⁴⁴¹ EP, EC, *Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation*, Official Journal of the European Union, L277/11, 19/9/2014; www.eur-lex.europa.eu.

⁴⁴² Cf. *EU Transparency Register*; assessed on 1/9/2017; www.ec.europa.eu/transparencyregister.

⁴⁴³ *Ibidem*.

⁴⁴⁴ EP, EC, *Agreement between the European Parliament and the European Commission on the transparency register (...) III Scope of the Register*, Art.7, Activities covered.

organising events, meetings, promotional activities, conferences or social events, invitations to which have been sent to Members and their assistants, officials or other staff of the EU institutions; and voluntary contributions and participation in formal consultations or hearings on envisaged EU legislative or other legal acts and other open consultations". Other activities are nevertheless not allowed. These are particularly related to legal assistance, professional advice, specific studies, etc.⁴⁴⁵.

As the EU Transparency Register is publicly accessible, we have explored its contents, its mode of operation and we have taken some immediate conclusions. Since its inception and up to the end of March 2017, the number of entities registered has risen steadily, reaching 11,351 subscribers⁴⁴⁶. About half of the members, 5,631, is part of the sub-section 'In-house lobbyists and trade/business/professional associations'; a quarter of all members, 3,007, is part of subsection 'Non-governmental organisations, platforms and networks and similar'. We find in this sub-section some associations and NGOs that will be analysed later in this thesis. Continuing in with this register, we see that the 'Professional consultancies/law firms/self-employed consultants' with 1,331 members. This is then followed by the 'Think tanks, research and academic institutions' (857 members). Penultimate in the Registry are the 'Organisations representing local, regional and municipal authorities, other public or mixed entities, etc.' (550 members). In the last position, of course, always considering the number of subscribers but not their importance or influence, we find the 'Organisations representing churches and religious communities' (50 members)⁴⁴⁷.

Searching through various members and in different categories, it is possible to get useful information about the nature of the registered organisation. It provides information about the profile of the member, for example contact details, the name of those charged with legal responsibility and EU relations and of course the goals of the organisation. It also has to declare the main "EU initiatives, policies and legislative files followed by the organisation", the field of interests and other specific activities they pursue. Other important information, that meets the need for transparency, is the number of persons involved in the activities and financial data: they have especially to declare the "estimate of the annual costs related to activities covered by the register" and if they get funds from EU institutions⁴⁴⁸. In this way we can get an idea of the influence that may have certain organisations, at least from a financial point of view. Finally we can explore

⁴⁴⁵ *Ivi*, Art.9-10.

⁴⁴⁶ EP, EC, JTRS, *Transparency Register Statistics*, Evolution of Registrations, 25/7/2017, pp.2-5; www.europa.eu.

⁴⁴⁷ *Ibidem*.

⁴⁴⁸ *Ibidem*.

membership and affiliation of these organisations like reading a book: this is helpful to reconstruct eventual network of associations that fight for common interests at EU institutions.

2.5.3. The spaces for NGO lobbying

Although NGOs have been studied by the political and social sciences for more than twenty years, the factor of geography has not been considered in any detail, especially in terms of its socio-spatial component. Understanding the socio-spatial conditions in which actors act, the stage itself, should be an important part in the analysis of the functioning of NGOs. Every NGO should therefore consider its socio-spatial dynamics to ensure the fullest mode of operation possible. Given that this thesis focuses on the lobbying and advocacy of NGOs, it is appropriate to focus on the major cities where these activities occur.

Several authors have pointed out that a change in the international political process has led to a situation where the world is no longer dominated solely by state actors but rather consists of many other actors. Finger, for example, argues that the 1,400 NGOs delegates present at the Rio de Janeiro Earth Summit in 1992 is proof of this change⁴⁴⁹. Certain spaces have been left open by the state and they are more and more rapidly being filled by NGOs and other private entities. According to Bläser, state actors and other institutions are in constant need of specific know-how from NGOs, especially if regarding "soft" policy areas such as human rights, environment and development. Nevertheless "hard" policy areas, such as security, finance and trade are slowly opening but only with a certain reluctance to civil society⁴⁵⁰.

Transnational NGOs contribute to a transformation of the "power geometry" and can therefore be considered as heterogeneous components of the global civil society⁴⁵¹. This is also the reason why since the Rio Summit of 1992, the actors of global civil society are developing and arguing their criticism to the UN, the G8 and the WTO's conferences. Although we have quoted as an example the Earth Summit in Rio, it is important to emphasise that most of the daily lobbying and advocacy work done by NGOs does not take place in public but rather in private spaces, particularly in certain crucial cities in which NGOs have focussed their lobbying activities. We have identified three cities

⁴⁴⁹ FINGER M. *Environmental NGOs in the UNCED process*, in *Environmental NGOs in World Politics: Linking the Local and the Global*, Routledge, London & New-York, 1994, p.200.

⁴⁵⁰ BLÄSER R. *Les ONG transnationales à Genève et à Bruxelles. Densité institutionnelle et opportunités socio-spatiales dans des villes mondiales*, in: *Annales de géographie*, Armand Colin, 2009, p.383.

⁴⁵¹ MASSEY D. *Power-geometry and a progressive sense of place*, in Bird, J., Curtis, B., Putnam, T., & Tickner, L. eds. *Mapping the Futures: Local Cultures, Global Change*, 2012.

that represent a significant example of this, notably Brussels, Geneva and New York. The socio-spatial anchoring in these cities is essential for some NGOs to act on the international political process⁴⁵². Brussels and Geneva have become internationally cities of prime importance in the second part of the 20th century. An essential factor of the choice was the presence of a considerable number of IOs, both from politics and from the civil society.

The first city, Brussels, has a multifaceted and unique character in that it is first the capital of the federal state of Belgium. It is, therefore, the seat of the federal government, as well as the Belgian monarchy. It is also the capital of the Communauté Française, of the Region-Community of Flanders and of the Brussels Capital Region itself, which includes nineteen municipalities, including the municipality of Brussels⁴⁵³. Furthermore, Brussels started to become the Capital of Europe after the signing of the Treaty of Rome in 1957, as the first wave of European institutions began to be installed. Ten years later, in 1967 the opening of the NATO headquarters added concrete to this process⁴⁵⁴. As the seat of the Council of the EU, the European Council, the Commission, the European Committee of the Regions, the European Economic and Social Committee, the European External Action Service (EEAS), and several other related agencies, Brussels hosts more than 30,000 EU officers⁴⁵⁵ and between 15,000 and 20,000 lobbyists⁴⁵⁶ who want to assert their interests upon European decision makers. The majority of lobbyists defend the economic interests of MNCs or professional groups and in addition to these there are the representatives of the MSs, regions, local communities and even the NGOs that interest us in this thesis. As a result of the presence of all these representatives of special interests, Brussels has become one of the most important cities for lobbying and one of the cities hosting the largest number of embassies and diplomatic missions in the world⁴⁵⁷. Other parallel activities are connected to the sector of European institutions: there are about 1,400 journalists, 300 regional representations, over 5,300 diplomats, 2,500 other international agencies, 2,000 multinational companies and over 150 international offices of law in the city⁴⁵⁸.

⁴⁵² BLÄSER R. 2009, pp.383-384.

⁴⁵³ POIRIER J. *Choix, statut et mission d'une capitale fédérale: Bruxelles au regard du droit comparé*, in WITTE E. et al., *Bruxelles et son statut*, Larcier, Bruxelles, 1999, pp.61-85.

⁴⁵⁴ Cf. NATO official website; accessed on 28/11/2016; www.nato.int/history.

⁴⁵⁵ In 2016, the EC employs 23,330 people in the Directorate-Generals (DGs), the EP around 6,000 people working in the general secretariat and in the political groups, the Council of the European Union employs around 3,500 people in the general secretariat.

Cf. EC, *Officials and temporary staff by directorate-general and gender*, Statistical Bulletin on 01/02/2016, and "EU administration - staff, languages and location"; accessed on 28/11/2016; www.europa.eu/european-union/about-eu/figures/administration_en.

⁴⁵⁶ CORIJN E., VANDERMOTTEN C., DECROLY J-M., SWYNGEDOUW E. *Bruxelles, ville internationale*, Brussels Studies, Notes de synthèse, mis en ligne le 24 février 2009, pp.1-11.

⁴⁵⁷ Cf. Addresses of foreign Embassies and Consulates in Belgium; www.diplomatie.belgium.be.

⁴⁵⁸ CORIJN E., VANDERMOTTEN C., DECROLY J-M., SWYNGEDOUW E. 2009, pp.1-2.

Geneva is also a capital of international negotiations and an important city, considered to be the hub of historical world governance, multilateralism and peace agreements. Organisations in the city are particularly active in the areas of human rights, migration, trade, health, disaster relief, labour, intellectual property and the environment⁴⁵⁹. Here the ICRC was founded in 1863. Later the humanitarian tradition of the city and the role of neutral power of Switzerland, allowed the headquarters of the League of Nations to be established between 1920 and 1946. The headquarters of the International Labor Organisation (ILO) was also founded in 1919. Today the city is the main European headquarters of the UN and the United Nations Office at Geneva (UNOG) serves as the representative office of the Secretary-General. It is the most important office after the main one, which is located in New York and has a staff of around 10,000 people. Here there are numerous specialised agencies, initiatives, "a large number of intergovernmental organisations, programs, funds, offices and research institutes as well as related organisations"⁴⁶⁰. Almost all UN agencies have representation in Geneva. To mention just a few: Food and Agriculture Organisation of the United Nations; Intergovernmental Panel on Climate Change, International Atomic Energy Agency, the United Nations High Commissioner for Refugees, the World Health Organisation and many others. The city also hosts over 700 NGOs and 179 diplomatic missions. According to the same figures concerning March 2019, nearly 34,000 people worked in international Geneva, i.e. 26,645 officials, 4,203 diplomats and 3,109 NGO employees⁴⁶¹.

Much more happens in New York, where the UN is headquartered and which contains the seats of the principal organs of the UN, including the General Assembly; the Security Council, as well as housing the offices of the Secretary General. Many UN funds and programs, from which NGOs are financed, are based in New York, including: the United Nations Development Program (UNDP); the United Nations Population Fund (UNFPA) and the United Nations Children's Fund (UNICEF). There are also other notable entities such as UN Woman⁴⁶². ECOSOC, one of the main organs of the UN, is also based in New York. As detailed above, it maintains relations with NGOs that have consultative status and participate in the work of the UN. Given the important concentration of UN bodies in New York, a large number of international NGOs are presents in the city. In this context we can see what Bläser means by his definition of "institutional density", a concept developed by other scholars for explaining the characteristics of regional development. The concept of institutional density applied to an urban context helps us to understand the importance of trans-local

⁴⁵⁹ BRADLEY S. *Perché la Ginevra internazionale è tanto importante per la Svizzera?*, 2/12/2019, www.swissinfo.ch; accessed on: 15/9/2020.

⁴⁶⁰ Cf. UN Geneva; www.unog.ch; accessed on 15/9/2020.

⁴⁶¹ BRADLEY S. 2019.

⁴⁶² Cf. UN Funds, Programmes, Specialised Agencies and Others; www.un.org; accessed on 15/9/2020.

relationships for actors who take advantage, in a certain place, of the possibilities of construction, approval, transmission of ideas, as well as of obtaining information and knowledge⁴⁶³.

The concentration in certain centres of power such as Brussels, Geneva or New York, displays a certain characteristic of these NGOs legitimization strategy. The meaning of spatial proximity relationships in the daily work of NGOs is considered very important. It allows the increase of the frequency of contacts with other NGOs representatives in the surrounding environment, thus increasing the available resources. Personal contact facilitates the development of relationships between people. Furthermore, the possibility to live in places where there are established international institutions opens the opportunity to see the inner workings in depth, which is a key element. The possibility of obtaining informal resources, based on the knowledge and confidence, is only possible thanks to spatial proximity.

There are also institutionalised coalitions - or networks - to which various NGOs come together to work around a specific topic. This grouping and close proximity allows an increase of resources for individual NGOs and makes their power more effective *vis à vis* the EU institutions. For the success of lobbying activities of NGOs, it seems therefore fundamental to keep a spatial proximity with the actors representing similar interests. The ability to establish informal contacts with representatives of governmental institutions, whom the NGOs would influence in their decisions, is therefore a key element of the strategy of NGOs⁴⁶⁴.

2.5.4. Human resources for NGO lobbying

Since at least the nineties, NGOs have considerably evolved in terms of professionalisation, working a lot in the enhancement of human resources. NGOs in fact go through structural and organisational changes in which associative management and communication gradually leave the space to a more professional approach. Today most of the largest INGOs are run by professionals. High skills and commitments are essential to expand the organisation's scope and membership. Professional workers therefore take the place of the original voluntary founders inside the organisations. This is largely because the growth of NGOs is accompanied by the logic of more contractual commitments where wages and employment tend to replace the initial voluntary work. Relations between associations and donors are institutionalised so that NGOs need to constitute

⁴⁶³ BLÄSER R. 2009, p.385.

⁴⁶⁴ *Ivi*, pp.383-394.

functional departments (human resources, marketing, management control, accounting and finance) under the supervision of a general direction which is distinct from the chairman⁴⁶⁵. Human resources are then gradually hierarchically organised: the organisation adopts a much more rational character, which relies on rules, skills and qualifications⁴⁶⁶.

Today the professionalism of NGO workers is a fact. Traditional activists and workers on a voluntary basis are more and more being replaced by local or international paid employees. NGOs often have problems in recruiting staff, especially because of the skills and experience demanded in some specialised or technical posts and the commitment in the solidarity that NGOs seek⁴⁶⁷. Competent staff are needed also to establish sophisticated accounting procedures, "to close monitoring of expenditure both at headquarters and in the field, measures to improve telecommunication, attention to security rules and so on are now permanently on the agenda, not to mention the increasing number of inspections by innumerable national, European and international monitoring mechanisms and by auditing firms appointed by public or private sponsors"⁴⁶⁸. The competition between NGOs for retaining staff with specific technical skills is high. So often workers do not remain loyal to an NGO, but they move around changing from one NGO to another or they switch to IGOs or other public or private agencies.

2.5.5. Financial resources for NGO lobbying

In order to influence public policy and in general to carry out their activities, NGOs need funding. The differences in fundraising between small local groups and big INGOs are huge. In general, NGOs depend on being financed by contributions from individuals; foundations or businesses, public subsidies, fees and sales. Evidently each organisation is different. NGOs are financed by public and private funding in different proportions, according to the NGO type and the country of origin. In many cases, NGOs are able to cover a part of their budget with self-financing activities. A statistical analysis from OECD shows the origin of the European NGOs income. It denotes the dominant sources of NGOs financing, divided by country.

For each state, the sources of NGO income are split into three categories. The first category is labelled 'official' and is concerned with income received from government's sources. It consists of

⁴⁶⁵ QUEINNEC E. *La croissance des ONG humanitaires*, Revue française de gestion, 2007, p.90.

⁴⁶⁶ THIERY P., PERRIN C. 2005, p.79.

⁴⁶⁷ RYFMAN P. 2007, p.31.

⁴⁶⁸ *Ivi*, p.37.

funding derived from local, national and multilateral sources. The second is named 'private' and refers to income received from voluntary donations. It consists of funding coming from private individuals, corporations, trusts and foundations. The last category is named 'self-financing' and deals with income received through the exchange of goods and services, for example through trading and consultancy services. This analysis is a bit obsolete, since it dates back to 1993, but it can give us an idea on how NGOs are financed in several European countries. It is based on a sample of 1,832 organisations⁴⁶⁹.

Some statistical surveys show that official funding is higher than private funding in Belgium (53% compared with 38% and self-financing 9%); in the Netherlands (47% compared with 22% and self-financing 31%); in Denmark (65% compared with 10% and self-financing 25%)⁴⁷⁰. However, in most countries public funding represents a minor part, when considering the overall public-private ratio of 36:63% (in 1991)⁴⁷¹. In Poland, for example private funding represents 93% (public 6% and self-financing 1%); NGOs in France seem to differentiate widely their sources of funding (public 38%, private 42% and self-financing 20%); private financing prevails in Italy with 67% (public 29% and self-financing 4%); even in Germany private donations are the largest slice and represent 59% (public 32% and self-financing 9%). Counter-current is Turkey which is accounts for 60% by self-financing (public 29% and private 11%)⁴⁷².

Evidently the situation differs from one NGO to the next. Some of them, like MSF, are proud to affirm that "more than 90% of [our] overall funding comes from [millions of] private sources, not governments"⁴⁷³. Another NGO, World Vision, declared that 54% of their revenue sources came from private cash contributors; 22% from gifts-in-kind (goods and services, mainly from companies, donated as gift)⁴⁷⁴, and 23% from public grants or bodies (as USA governments agency USAID, the EC DG ECHO, the United Nations)⁴⁷⁵. Others like Handicap International underlined the importance of the diversification of funding sources in order to preserve the independence and the sustainability of their actions. INGOs financial transparency has become a fundamental management principle of their action and external checks could be made by third parties,

⁴⁶⁹ WOODS A. *Facts about European NGOs Active in International Development*, OECD Publishing, Paris, 2000, p.15.

⁴⁷⁰ *Ivi*, p.17.

⁴⁷¹ RYFMAN P. 2007, p.29.

⁴⁷² WOODS A. 2000, p.17.

⁴⁷³ As declared on their website; accessed on 1/06/2016; www.msf.org/en/about-msf.

⁴⁷⁴ What we could even call self-financing.

⁴⁷⁵ And "other" operating revenue represents 1%. Cf. *World Vision financial highlights 2016*; accessed on 1/8/2017; www.worldvision.org.

associations or private auditors⁴⁷⁶.

Private funding comes from a broad range of sources such as contribution from individuals, corporations or foundations, publication subscriptions, membership dues, the sale of goods and services. The major problem of private funding is the fluctuations linked to economic conditions. On the contrary, funding coming from public sources seems to be the most stable way to implement projects but it implies that NGOs cooperate with governments. There are potentially many benefits for both donors and for NGOs. Interactions related to the issue of funding between donor agencies and NGOs are different. They carry out development projects with donor funds through a mechanism of contractors and subcontractors. A very close alternative is the system of co-financing, in which NGOs financial efforts are supported by official funds⁴⁷⁷. The co-financing is today the most common kind of donor-NGO interaction. However, constant lobbying activities allow NGOs to obtain constant funding streams. In order to reach them, it is necessary for a strong effort from the NGO at the right moment, e.g. during the discussion for the foreign aid budget approval from governments. For an NGO this activity is certainly a cost in the short term but it will be recovered in the medium term due to an increased ability to obtain subsidies.

In these ways NGOs also try to influence donor policies. The interaction can be exerted on a single project or on the overall donor policy. In the first case the NGO will seek to modify the specific conditions to their advantage. In the second case the NGO will try to promote their vision of aid policy through ongoing dialogue with a certain institution. These two cases of interaction are linked for, by obtaining a single funding stream, it triggers a more general discussion on the donor policies. Issues related to the cooperation between NGOs and donors are multiple and complex. One of the risks (or consequences) of the donor funding for an NGO is the dependence. "NGOs that rely on government subsidies for all or most of their income are not rare and can be found in almost any country", but causes for the NGOs a number of dilemmas⁴⁷⁸. An NGO will probably be less flexible in their project as it is required to submit regular reports and evaluations to the donor, developing an expensive bureaucracy. The funds used for this activity will undoubtedly be subtracted from the project implementation.

Another important issue concerns the independence of NGOs from donors and governmental

⁴⁷⁶ HANDICAP INTERNATIONAL *Annual Report 2014*; accessed on 2/06/2016; www.handicap-international.org.

⁴⁷⁷ This case is very common for European NGOs. The EU provides specific procedures in this regard in order to finance the work of European NGOs in many countries of the world.

Cf. EC Council Regulation (EC) No 1658/98 of 17/7/1998; accessed on 1/07/2016; www.eur-lex.europa.eu.

⁴⁷⁸ AHMED S., POTTER D. M. 2006, p.112.

control. One of the greatest risks for an NGO is to be associated with military forces⁴⁷⁹. In this case, problems may arise with other lenders, especially private donors, that could refuse the political and social agenda that comes with being a public donor. An exemplary case to illustrate this issue is the 2003 invasion of Iraq. In fact, many NGOs were strongly opposed to the war. The dilemma for NGOs was present during and after the war. Many of them did not want to intervene on the side of the invading army, nor contribute to the reconstruction. NGOs reacted in different ways: Oxfam, for example, refused funds from the British government in order to distance itself from the policy of London⁴⁸⁰. This case shows how accepting foreign aid also means accepting donors' sectoral and geographic priorities. Governments orient their subsidies based on where they have more direct interests, capturing the attention of the NGOs. In this way, entire countries or regions may be excluded from any intervention or project. Besides being always in search of funds, NGOs are likely in this manner to lose their original character. The risk is also that the NGOs could assume the same official aid mentality of the donors themselves. Another problem coming from donor funding is the possibility to create competition among NGOs. This could attach to the profile and the character of NGOs.

2.6. Integral aspects of NGOs

In this dissertation we use generally the terms NGOs to identify non-governmental organisation as well as similar advocacy and interests groups. An accurate description of the organisations analysed is clearly provided in Chapter One and specific details concerning our case study can be found in Chapter Three. Theoretically all these organisations are usually included in the larger group of CSOs who "play a key role in every political system as they represent groups of citizens, provide them with a collective identity, make their 'voice' heard by decision makers and influence societal norms"⁴⁸¹.

CSOs intend to participate, deliberate and try to influence the most important IOs like the UN, OECD, EU etc. As our case study concerns the EU regulation on conflict minerals, we underline that some scholars believe that CSOs involvement in negotiations "has been put forward as an important way to nurture the EU's weak democratic legitimacy and contribute to more effective policy making by bringing in the voice of the broader citizenry of Europe. Their involvement is

⁴⁷⁹ OXFAM INTERNATIONAL, *Iraq: Humanitarian-Military Relations*, Oxfam Briefing Paper, March 2003.

⁴⁸⁰ GORDON S. *Military-humanitarian relationships and the invasion of Iraq (2003): re forging certainties?*, Journal of Humanitarian Assistance, 2004.

⁴⁸¹ JOHANSSON H., LEE J. *Bridging the gap: how do EU-based Civil Society Organisations acquire their internal representation?*, VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations, 2014, pp.405-424.

expected to mediate the distance between society and the EU by bringing Europe much closer to the people hence alleviating the criticism towards the EU for being an elitist project"⁴⁸². The action of NGOs in political negotiations is expected from the same institutions, especially in some issues where there is a lack of credibility, with public opinion and citizens. There exists a prevailing general belief that "CSOs should be involved in international policy-making in order to increase the legitimacy of decision-making".⁴⁸³ This does not mean that automatically CSOs increase the legitimacy of institutions and their decision-making process. Worse still, some authors consider CSOs as actors without democratic legitimacy and control, "but nevertheless willing and to some degree able to impose their views on society at large, claiming that they are speaking for it but lacking any actual linkage with it"⁴⁸⁴. Other scholars confirm that "CSOs, came into existence and they are more actively striving for influence on policy-making by IOs, and to some degree, they factually exercise influence"⁴⁸⁵. For this thesis we will start from the idea that "CSOs do play an active and measurable (or at least noticeable) role in international governance"⁴⁸⁶.

As Dodworth pointed out, NGOs share "an idea of the 'public' interest as well as their 'private' professionalism and independence. In this way they are neither 'surrogates' of the state nor intrinsic adversaries but strategists in a political playing field who continually and creatively craft their space and opportunity to act"⁴⁸⁷. NGOs therefore become bearers of the public interest; in particular they make citizens aware of some problems that would otherwise be little known. Furthermore, their role is also considered more independent than the media, which pursue different interests. As we will see for the crisis in the east of the DRC, NGOs have ensured greater and more complete knowledge of the situation on the ground. Indeed "in terms of information transmission, CSOs can create a link between citizens and IOs. Acting as a supplement to the media, CSOs are also seen as a contributor to an informed public discourse by informing members and the general public about what is going on at the international level"⁴⁸⁸. This is also why they are more legitimate to intervene in the law-making process, given that "they are more knowledgeable and thus able to "translate" a policy into real life effects, and are tracking the IO more continual and more closely than the media"⁴⁸⁹. Moreover, their goal is not profit, as is the case with the media or, indirectly, for other conventional

⁴⁸² *Ibidem*.

⁴⁸³ KOTZIAN P., STEFFEK J. *Legitimacy and activities of civil society organizations*, TranState working papers, 2011, p.8.

⁴⁸⁴ *Ivi*, pp.3-4.

⁴⁸⁵ *Ivi*, p.2.

⁴⁸⁶ *Ivi*, p.4.

⁴⁸⁷ DODWORTH K. *NGO legitimization as practice: working state capital in Tanzania*, Critical African Studies, 2014, p.35.

⁴⁸⁸ KOTZIAN P., STEFFEK J. 2011, p.2.

⁴⁸⁹ *Ibidem*.

business lobbying groups. Also for this reason we generally consider that "CSOs are somehow able to embody, represent, or reflect citizens' interests, anxieties, hopes and ideals"⁴⁹⁰. In this way they are able to reduce the democratic deficit of institutions, contributing to increase their legitimacy.

The NGOs selected for our study are active in "the most prominent themes of today's international governance: Trade, Environment, Peace, and Human Rights"⁴⁹¹. They "ideally perform several functions, among them interest mediation and advocacy addressing the IO, but also the transmission of information from the relatively closed circles of International Governance to members and the broader public"⁴⁹². Communication is a typical instrument which they use to create a connection between citizens and institutions. Of course, communication is chosen and targeted in specific cases, for example "when members are asked to submit their views, via periodical votes, surveys and elections"; however a selection of the information to be transmitted to the public is necessary for an NGO in order to "be seen as a trustworthy and discreet negotiation partner by the IO, which is a requirement for exercising influence"⁴⁹³.

The NGOs that work directly with the EU institutions and that we have chosen in this thesis "have established relatively privileged relations with the Commission through both institutionalised channels and informal interactions, and draw legitimacy for their advocacy and lobbying activities by claiming broad representativeness"⁴⁹⁴. Their legitimacy comes as well from many other aspects, as we will analyse, for example their formal representation structure, their membership, the networks to which they adhere, their transparency or their independence⁴⁹⁵.

2.6.1. Defining legitimacy and legitimation

Legitimacy is a key concept in IR and for the social sciences. Legitimacy applies to the right and the recognition of the authority, the institutions, a political regime or more generally to those who exercise power⁴⁹⁶. After having analysed the scholars who have constructed the most influential theoretical models⁴⁹⁷, we focused on those who have worked deeply on legitimacy, legitimation and

⁴⁹⁰ *Ivi*, p.3.

⁴⁹¹ *Ivi*, p.12.

⁴⁹² *Ivi*, p.20.

⁴⁹³ *Ivi*, p.21.

⁴⁹⁴ JOHANSSON H., LEE J. 2014.

⁴⁹⁵ *Ibidem*.

⁴⁹⁶ FRIEDRICH C. J. *Tradition and authority*, Macmillan International Higher Education, 1972.

⁴⁹⁷ CLARK I. et al. *Legitimacy in international society*, Oxford University Press, 2005;

WEATHERFORD M. S. *Measuring political legitimacy*, The American political science review, 1992, pp.149-166;

THRANARDOTTIR E. *NGO legitimacy: four models*, Representation, 2015, pp.107-123.

organisations in order to extract some of the key characteristics and definitions. This will be helpful in order to use the most pertinent words when using the concepts of legitimacy or legitimation and to avoid using them ambiguously, as is sometimes done in the literature⁴⁹⁸. However, we underline that "legitimacy and legitimation are profoundly malleable conceptual tools"⁴⁹⁹ which we will apply and make extensive and wide use of. Where many devices of social scientists have failed, while using very precise research tools, we suspect that "inherent vagueness" could be "the key to the success of these constructs. As the tradesmen of social science have groped to build elaborate theoretical structures with which to shelter their careers and disciplines, legitimation has been a blind man's hammer"⁵⁰⁰.

Later on in this chapter, we will explore more precisely how legitimacy and legitimation work for NGOs. Let us first start by extracting some pertinent definitions which appear abound in the literature. We start by quoting Hybels who states that "legitimacy is defined simply in terms of observed social stability"⁵⁰¹. Within power relations, legitimacy serves to cooperate with other actors and advance one's positions with those who are in power: in our specific case, legitimacy allows an actor to try to influence the formation of a law. Furthermore we highlight how legitimacy is a product of persuasion⁵⁰² and we will see later how this is a fundamental characteristic for advancing a certain discourse.

According to a study by Mulligan, legitimacy lays its basis in the community: it emerges in "an agreement or even consensus among those whose opinion matters, as to a particular good - the benefits of membership in a community, or peer approval, or international stability"⁵⁰³. Consequently, in this regard, "legitimacy 'implies ... acceptance' of the international order", and the actors must therefore abide by the rules of the system in order to be able to interact with it⁵⁰⁴. Specifically for our case, it is necessary to state that in order to be considered legitimate, an actor is required to obey the rules given by the institution with which the actor is confronted. Indeed legitimacy "refers to the normative belief by an actor that a rule or institution ought to be obeyed"⁵⁰⁵. Each actor has a different perception of the institution and this different insight is caused

⁴⁹⁸ MULLIGAN S. P. *The uses of legitimacy in international relations*, Millennium, 2006, p.352.

⁴⁹⁹ HYBELS R. C. *On legitimacy, legitimation, and organizations: A critical review and integrative theoretical model*, In: Academy of Management Proceedings, Briarcliff Manor, NY 10510: Academy of Management, 1995. p.241.

⁵⁰⁰ *Ibidem*.

⁵⁰¹ *Ibidem*.

⁵⁰² *Ibidem*.

⁵⁰³ MULLIGAN S. P. 2006, p.364.

⁵⁰⁴ *Ibidem*.

⁵⁰⁵ HURD I. *Legitimacy and authority in international politics*, International organization, 1999, p.381.

by the different ways of working; of dealing with authority or by the specific interests of the actors⁵⁰⁶. To obtain legitimacy, however, it is necessary to have first established contact between the actor and the institution. In fact, within the literature there is substantial agreement on the fact that legitimacy "is intimately linked with the institutionalization of specific social phenomena and the stability of social relationships"⁵⁰⁷. In this sense, "legitimacy of broader cultural and societal beliefs and values" must match with power positions⁵⁰⁸. Consequently, without stability and institutionalization of the actor, there can be no contact and therefore no legitimacy.

Working more specifically on organisational legitimacy, the sociologist Suchman proposes a specific definition as "a generalized perception or assumption that the actions of an entity are desirable, proper or appropriate within some socially constructed system of norms values, beliefs, and definitions"⁵⁰⁹. When we talk about entities, we mean a group, a structure, an authority, or a social practice⁵¹⁰. According to Suchman, an entity is legitimate if its actions are publicly endorsed or shared by a social group⁵¹¹. He identifies three forms of legitimacy: pragmatic, moral and cognitive. I) Pragmatic legitimacy is based on the specific interest of the audience of an organisation. In this case the constituency determines the actions and the positions of the organisations through constant monitoring and it can actively or passively support it⁵¹². II) Moral legitimacy is based on a positive assessment of an organisation's norms. Moral legitimacy allows a social group to judge the actions of an organisation or institution with respect to beliefs and personal assessments. It is interesting to note that the behaviour of an entity, that takes sides against socio-political or economic rules, can also be judged in terms of moral legitimacy even if the constituency judges them to be immoral. Moral legitimacy normally considers four different forms: evaluations of outputs and consequences; evaluations of techniques and procedures, evaluations of categories and structures, evaluations of leaders and representatives⁵¹³. III) Cognitive legitimacy is based on the ability to understand the usefulness of an entity. This type of legitimacy concerns the cultural preparation of the audience for a certain entity. It is not about the evaluation of the actions taken, but rather the ability to understand their usefulness. In this sense, some authors have written

⁵⁰⁶ *Ibidem*.

⁵⁰⁷ ERKAMA N., VAARA E. *Struggles over legitimacy in global organizational restructuring: A rhetorical perspective on legitimation strategies and dynamics in a shutdown case*, Organization Studies, 2010, p.816.

⁵⁰⁸ *Ibidem*.

⁵⁰⁹ SUCHMAN M. C. *Managing legitimacy: Strategic and institutional approaches*, Academy of management review, 1995, p.574.

⁵¹⁰ BERGER, J. et al. *The legitimation and delegitimation of power and prestige orders*, American Sociological Review, 1998, p.380.

⁵¹¹ SUCHMAN M. C. 1995, p.574.

⁵¹² *Ivi*, pp.575-579.

⁵¹³ *Ivi*, pp.579-582.

about 'comprehensibility in legitimation'. This ability allows the company to discern whether the entity is necessary or superfluous⁵¹⁴.

To get to be legitimate, an actor must first go through the legitimation process and, as we study in this thesis, this is done through the use of different strategies. Indeed, "legitimation is the process whereby an organization justifies to a peer or superordinate system its right to exist"⁵¹⁵ In addition, many authors cite a 1960s definition by Parsons when he described "legitimation as the appraisal of action in terms of shared or common values in the context of the involvement of the action in the social system"⁵¹⁶. In other words, an organisation that seeks legitimacy must try to match its values, ideals, principles and purposes with the norms imposed or existing in the social system. As explained by Dowling and Pfeffer, "organisations seek to establish congruence between the social values associated with or implied by their activities and the norms of acceptable behavior in the larger social system of which they are a part. Insofar as these two value systems are congruent we can speak of organizational legitimacy. When an actual or potential disparity exists between the two value systems, a threat to organizational legitimacy emerges. These threats take the form of legal, economic, and other social sanctions"⁵¹⁷.

Legitimation is also widely regarded as a multilevel social process "that mediates the relationship between power and authority and affects the establishment, persistence, and change of social organizational forms"⁵¹⁸. Also for this reason, the legitimation process is linked to experience⁵¹⁹: actors need many years, resources and energy to be able to boast of an influential action among those in power. However, even if there is a possibility of being delegitimised, it is important to remember that "legitimated structures tend to be stable, and even when their regulatory prescriptions are at odds with some observed inconsistent task outcomes, they can continue to exist"⁵²⁰. And even when there is the risk of being delegitimised, an organisation "continues to use the group's time and attention, continues to initiate proposals with the expectation that they will be accepted, continues to try to exercise influence in the face of disagreement"⁵²¹.

⁵¹⁴ *Ivi*, pp.582-584.

⁵¹⁵ HYBELS R. C. 1995, p.241.

⁵¹⁶ DOWLING J., PFEFFER J. *Organizational legitimacy: Social values and organizational behavior*, Pacific sociological review, 1975, p.123.

⁵¹⁷ *Ivi*, p.122.

⁵¹⁸ BERGER, J. et al. 1998, p.379.

⁵¹⁹ HYBELS R. C. 1995, p.241.

⁵²⁰ BERGER, J. et al. 1998, p.388.

⁵²¹ *Ibidem*.

Not much has been written about the strategies and dynamics of legitimation of organisations that apply directly to our case study. However, there has been a growing interest in language as a tool that influences legitimation strategies. An interesting article on this subject identifies five explicit types of rhetorical legitimation strategies and dynamics. Indeed language can "create meanings that either legitimate or delegitimize change" and is capable of advancing or regressing the legitimation process⁵²². Rhetorical legitimation strategies are specific, not always intentional or conscious and can be used differently and include persuasion and convincing.

It is interesting to highlight, for our case, a study by Vaara and Tienari who study the discursive strategies used in newspaper articles to legitimise a certain case which "focused on four general types of semantic-functional strategy: authorization (legitimation by reference to authority), rationalization (legitimation by reference to utility of action), moralization (legitimation by reference to specific value systems), and mythopoesis (legitimation conveyed through narratives)"⁵²³.

These four general types of semantic-functional strategy are particularly important for organisations in order to achieve legitimation. The authorisation strategy encourages the organisation to approach the legislator. In particular, we will see how an organisation needs to deal with an official register to interact with a political power. Rationalisation, including of resources, is a strategy that allows the organisation to be more effective by collaborating with other entities. Moralisation is continually present in the public and private discourse that organisations undertake to sensitise society and the legislator, convincing them of the importance of their actions. Finally, mythopoesis occurs when organisations constantly feed a narrative favourable to their own goals and interests.

Starting with the clarification of these two concepts, this thesis analyses the legitimation strategies of NGOs, through which they have acquired legitimacy: this process has allowed them to have a role in the process of forming and approving of the EU Conflict Minerals Regulation. Mainly, as we will see, the process of acquiring legitimation takes place "through conferral of resources and communication of good will"⁵²⁴. The 'conferral of resources' is essential to catch up with other organisations and bear the costs of lobbying. The 'communication of good will' takes place mainly with advocacy actions: the aim is to convey to other actors and to society in general the importance of supporting the recommendations of NGOs.

⁵²² ERKAMA N., VAARA E. 2010, p.817.

⁵²³ *Ivi*, p.818.

⁵²⁴ HYBELS R. C. 1995, p.241.

2.6.2. How the process of legitimization works for NGOs'

Legitimation is central in politics and in IR, especially when we consider that "by legitimation we mean how political actors publicly justify their policy stances before concrete audiences, seeking to secure these audiences' assent that their positions are indeed legitimate and thus potentially to garner their approval and support"⁵²⁵.

Applying the concept of legitimation to NGOs is a fairly recent practice, given that "traditionally, the concept of legitimacy was mainly used in the context of state power, most notably when discussing the legitimacy of government"⁵²⁶. NGOs could be legitimate, but not automatically, rather by their mission, their history and their accomplishments. We could also consider other factors that are related, such as: "their 'representativeness'; the democratic quality of their internal procedures; their external accountability"; their societal constituency; their involvement in decision-making⁵²⁷. In this thesis, however, we will focus mainly on legitimation strategies, by analysing some of the key aspects and others that will fully satisfy our research questions, without going too deeply into other secondary concepts like representation and accountability.

"In the normative sense, legitimacy refers to the conditions under which power is rightfully exercised"⁵²⁸: in Chapter One we will show how NGOs are allowed to access to states, institutions and IOs that legitimise them to a position where they can influence norms and standards. NGOs actions are motivated by the beliefs of the people they support and the society which legitimate them. In fact as Dodworth clearly underlined, political capital garnered by NGOs, comes from both state and society. They develop strategies through time and space to gain legitimacy towards institutions as well as citizens. However, the content of the practices and strategies by which NGOs gain legitimacy has not been widely studied, particularly with regards to how NGOs construct their discourse. This kind of practice "play a decisive role in the broader process of legitimation, defined as the means by which the exercise of power is negotiated and rendered acceptable. These means are informed by Bourdieu's conception of 'capital' - economic, social and symbolic - as a set of accumulated resources on which actors draw"⁵²⁹. It is well known that NGOs act in public and private spheres using their 'capital'. Scholars explained that the accretion capital by NGOs could be

⁵²⁵ GODDARD S. E., KREBS R. R. *Rhetoric, legitimation, and grand strategy*, 2015, p.6.

⁵²⁶ STEFFEK J., HAHN K. *Introduction: Transnational NGOs and legitimacy, accountability, representation*, In: *Evaluating Transnational NGOs*, Palgrave Macmillan, London, 2010. p.9.

⁵²⁷ *Ivi*, pp.2-10.

⁵²⁸ *Ivi*, p.7.

⁵²⁹ DODWORTH K. 2014, p.24.

converted by each form to another, for example, from economic to social. This depends on strategies adopted by NGOs and on the objectives they set themselves to act legitimately. In this thesis we will explore, as well, how NGOs build their legitimation strategies to act around institutions and this occurs in different ways, depending on the objectives. In fact positions towards institutions change over time and space, "highlighting how the legitimation process must be continually recalibrated over time"⁵³⁰.

Another important concept from Bourdieu concerns scientific capital and this is useful to explain NGOs professionalisation, especially their capacity to acquire and use certain qualities or expertise to influence policy-makers. As Eagleton-Pierce summarises, "scientific capital functions as a form of symbolic power in the wider politics of social recognition and legitimacy production"⁵³¹. After gaining access to institutions, NGOs act as "critical technicians" and their workers are able to bring new knowledge to the table, in part because of their backgrounds and experience, academic or otherwise. The scientific capital of NGO professionals is prized: in this way they can act on highly specialised topics, such as complex policies and also interact with the official experts of the institutions⁵³². In developing professionalisation, major CSOs certainly "have been drawn towards increasingly technocratic and neoliberal forms of advocacy"⁵³³. Of interest here is Hannah's concept of "embedded NGOs" which some of the major organisations analysed in this thesis could conceivably be related. These kinds of NGOs "have emerged with the expressed aim to socially embed global markets, carve out additional policy or development space for developing countries, increase their negotiating capacity, and promote the three pillars of sustainable development - economic, social and environment. Eschewing conventional advocacy or protest work that challenges received wisdom, Embedded NGOs leverage their legal and technical trade-related expertise across a range of issue areas that are of primary concern to poor countries. (...) Embedded NGOs show good prospects for improving the inclusion and negotiating capacity of developing countries"⁵³⁴.

As NGOs can play a role throughout EU institutions, legitimacy concerns them as well. This can happen given that "these institutional actors are relatively open, so there is an enhanced space for organized civil society actors to contribute to policy making, and a potential means to seek to

⁵³⁰ *Ivi*, p.35.

⁵³¹ EAGLETON-PIERCE M. *Professionalizing protest: scientific capital and advocacy in trade politics*, International political sociology, 2018, p.237.

⁵³² *Ivi*, pp.234-249.

⁵³³ *Ivi*, pp.234-235.

⁵³⁴ HANNAH E. *The Quest for Accountable Governance: Embedded NGOs and Demand Driven Advocacy in the International Trade Regime*, Journal of World Trade 48, 2014, pp.457-479.

legitimize political decisions reached"⁵³⁵. In this manner institutions maintain a transparent and constant dialogue with CSOs and other associations representing specific interests. This does not mean that private organisations "replace the procedures and decisions of legislative bodies which possess democratic legitimacy"⁵³⁶; they only ameliorate the basic criteria for liberal democracy: the balance of powers; the democratic participation; the rights of specific groups to highlight their instances. However, some articles argue that the CSOs increased professionalisation and efficiency could undermine the EU democratic legitimacy and accountability. This could happen because, in order to participate to the decision making process, CSOs "must show a number of structural characteristics that make it suitable to participate in this process: institutionalised structures, capacity to produce expertise, social and financial resources"⁵³⁷. We highlight the issue that these structural characteristics are exactly compatible with the Brussels based NGOs chosen for this thesis, even if we are not interested in entering the debate of EU democratic legitimacy.

In their everyday work, "NGOs play in the production and reproduction of subtler form of legitimacy"⁵³⁸. NGOs manage to work towards government actor exercising the practice of legitimation, using their creativity to gain legitimacy. Practice is intended as a "‘routinised’ form of action which encompasses both body and mind, the ideational and material, knowledge and praxis"⁵³⁹. Through the practice of legitimation, NGOs are able to reaffirm their authority and exercise their power through formal and informal actions. These actions are oriented to implement public policy through the collaboration or the competition with the state. These relations with the state give to NGOs a certain degree of legitimacy⁵⁴⁰. Furthermore NGOs are used to spending energy and work hard to use their 'soft power', "the power to persuade and attract others"⁵⁴¹, or their influence, in order to exercise their governance. They are able to create a space in which their discourses try to have an influence towards different audiences⁵⁴². As it will be explained in Chapter One, discourse is a key strategy in acquiring legitimacy. In order to be efficient, a discourse should be addressed to the right audience, which play a decisive role in increasing the power of an actor giving him their consent. As Foucault emphasised "discourses produce the issues which are talked

⁵³⁵ GREENWOOD J. *Organized civil society and democratic legitimacy in the European Union*, British journal of political science, 2007, p.334.

⁵³⁶ *Ivi*, p.337.

⁵³⁷ SAURUGGER S. *The professionalisation of interest representation: A legitimacy problem for civil society in the eu*, Civil society and legitimate European governance, 2006, p.273.

⁵³⁸ DODWORTH K. 2014, p.22.

⁵³⁹ *Ivi*, p.23.

⁵⁴⁰ *Ibidem*.

⁵⁴¹ STEFFEK J., HAHN K. 2010, p.5.

⁵⁴² DODWORTH K. 2014, p.22.

about, as well as the subjects and their identities", deciding "what is 'right' and 'wrong'"⁵⁴³.

2.6.3. How different outcomes can demonstrate legitimacy

This is what we argue in this dissertation: we will explain the mechanisms by which the institutions guarantee the participation of NGOs to the law-making process. We will describe how NGOs practice legitimation with several different strategies throughout the society and the political power. In order to obtain legitimacy, NGOs build their discourse with several techniques, collaborating between them. We will make clear how the NGOs arguments are constructed through both a top-down and a bottom-up perspective. We have selected two groups of organisations: the first group works mainly in eastern DRC. They provide information and studies by which the second group of organisations can sustain a discourse vis à vis the legislator. Even if "the ability of southern NGOs' to exert an influence on international negotiations is extremely limited", according to some scholars⁵⁴⁴, we have demonstrated that it is not that simple. In fact 'southern NGOs' can work in partnerships with NGOs closer to EU legislator. Although it is true that in part there are still major inequalities in the representation of interests between different NGOs, we note that there has been a synergy of work between them for the issue of EU Conflict Minerals Regulation.

The second group of organisations works closely to the EU legislator and they share an international character. Their existence is closely connected to lobbying and advocacy activities which have the aim to influence the law-making process. According with a study of Dodworth, "these NGOs are both highly skilled in the production and consumption of legitimation capital"⁵⁴⁵. These two groups of organisations work sometimes together in order to reach some specific goals as we will analyse in our case study. We are aware of the profound disparity in the action capacity of these two groups of NGOs. Several scholars have indeed "questioned the role of transnational NGOs as 'spokespersons' of civil society and individuals in developing countries"⁵⁴⁶ and we have taken note of this literature.

In order to find parameters which can allow us to demonstrate NGOs influence, we assume that NGOs act as 'transmission belts' in international-level governance. They connect the world citizenship to IOs and institutions. They are able to transmit or represent citizens' principles,

⁵⁴³ STEFFEK J., HAHN K. 2010, p.6.

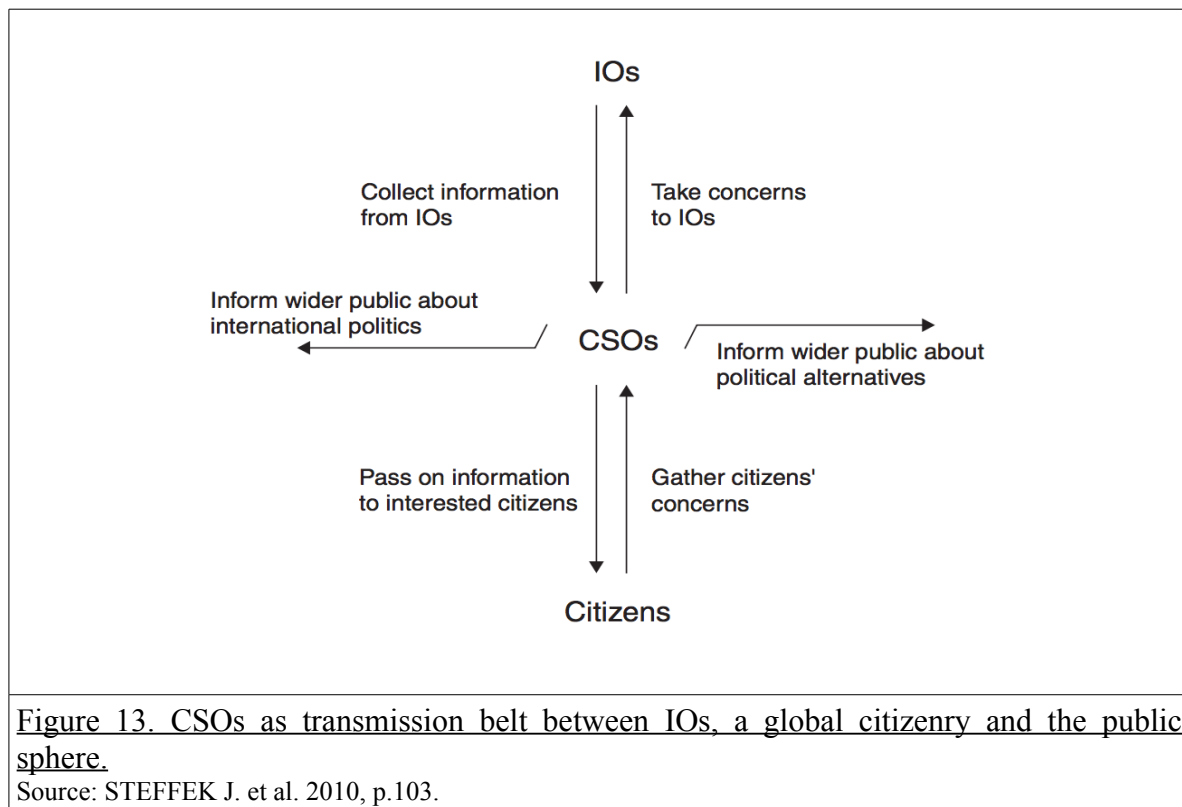
⁵⁴⁴ BRÜHL T. *Representing the people? NGOs in international negotiations*, In: *Evaluating Transnational NGOs*, Palgrave Macmillan, London, 2010, p.182.

⁵⁴⁵ DODWORTH K. 2014, p.23.

⁵⁴⁶ STEFFEK J., HAHN K. 2010, p.3.

visions, and interests as well as "transport them into the political arena"⁵⁴⁷. Scholars have explained that in term of decision-making, CSOs represent a "crucial source of information which can increase the quality of the policy, delivering relevant input (in terms of alternative policy solutions, evaluation of past decisions, but also in terms of agenda setting)"⁵⁴⁸. In this way legitimacy of the legislator also occurs and benefits from the relationship.

Figure 14 illustrates how CSOs act as 'transmission belts' between IOs, a global citizenry and the public sphere.



Conventional legitimation reinforces that of CSOs and consequently that of NGOs through the transmission belt concept, as we can learn from the literature: "in terms of legitimation, the transmission belt concept perceives CSOs as a supplement to conventional legitimation channels running from citizens as voters via national parties and elections to national parliaments and further on to governments and ultimately to IOs, where national governments decide on a consensual basis about international policies with national-level impact"⁵⁴⁹. Considering this transmission belt concept and in order to have a real legitimacy face to IOs, NGOs should respond to some criteria

⁵⁴⁷ STEFFEK J. et al. *Assessing the democratic legitimacy of transnational CSOs: five criteria*, In: Evaluating Transnational NGOs, Palgrave Macmillan, London, 2010, p.101.

⁵⁴⁸ KOTZIAN P., STEFFEK J. 2011, p.8.

⁵⁴⁹ *Ibidem*.

which could be measured qualitatively. For this thesis we want to demonstrate whether or not the legitimization strategies of NGOs have been influential in the process of getting a new norm accepted by the EU legislator. In order to be able to measure the effectiveness of legitimization strategies, we will develop and adopt some criteria and indicators, suggested by literature on democratic legitimacy of transnational CSOs that we will adapt to NGOs. For the purpose of this research, we assume that an organisation could be highly legitimate in one aspect and less in other. We do not consider that it is essential that an organisation meets all these criteria simultaneously and that none of the individual criteria is itself decisive. The five criteria that convey a communication channel between IOs and NGOs, which could help for the analysis of NGOs capacity to function as transmission belt are: participation, inclusion, transparency, independence and responsiveness⁵⁵⁰.

I) Participation supposes that NGOs include members which could be either organisations, individuals or both. As we consider in our case study, some of the organisations selected are mainly composed by other organisations, some others by more or less conspicuous groups of individuals. NGOs without members should be legitimised by other variables, for example, we consider some NGOs which are not legitimised by membership but from other variables, like transparency or independence. NGOs should involve members in their decisions, planning or strategies at some stage of their action to reach participation⁵⁵¹.

II) Inclusion is a criterion used to avoid the risk that NGOs ignore the needs of the ultimate beneficiaries, assuming the fact that they have to be connected to them. This criterion is useful for protecting NGOs from the accusation that they are representative of "an upper class and first world phenomenon": this is why it is important to know the opinion of the population concerned by some policies: if they are in favour or opposing or maybe if they have other propositions or ideas⁵⁵². We will see that the NGOs considered by this study use several strategies to meet this criterion. For example: some of them have regular meetings with beneficiaries; some others invite certain persons to participate at international conferences; others use surveys or specific studies before to decide in which way they could act to implement a specific policy.

III) Transparency is an important criterion in politics. This is because society increase the demand for political actors to report on their activities, the meaning of their decisions and of their actions. Transparency is mainly divided into organisational and financial. In the first case, organisations are

⁵⁵⁰ STEFFEK J., HAHN K. 2010, p.12.

⁵⁵¹ *Ivi*, pp.14-15.

⁵⁵² *Ivi*, p.16.

asked to justify their positions with position papers, reports of meetings or conferences and to record the positions taken by their members. Internal decision making procedures should be clearly explained in organisation rules. Another important element to evaluate the organisational transparency is the annual report that many of the organisations we interviewed regularly do and often make public through their website. In the second case, financial transparency, organisations are asked to clarify their source of financing, grants, public or private donations. They should also explain how they manage their budget and how they use their money. Their budget is often included in the annual report, therefore publicly accessible for many organisations⁵⁵³.

IV) Independence, especially from the market and from the government, is a criterion which guarantees the freedom to advocate and act without external interference. Independence from single funding, grants or donations, are important in order to prevent close links of dependence towards an economic actor, with the risk that the organisation's freedom of choice will be affected. Independence from the government guarantees instead the freedom of action towards the beneficiaries deemed most suitable⁵⁵⁴. This criterion is somewhat fragile and not easily demonstrable in the case of the organisations analysed in this thesis. A thorough search of all the financiers of all the organisations would have taken too long. Unfortunately, in the case of NGOs working in DRC, it is not even possible to verify their independence from institutions. However, we still have a lot of positive data that allows us to consider this criterion in most cases.

V) Responsiveness of an NGO to its members, supporters and beneficiaries is the ultimate goal of five criteria standing in a synergistic relationship⁵⁵⁵. After considering the first four criteria, we arrive at responsiveness, which represents "the output side of our assessment of the democratic quality of decision-making procedures"⁵⁵⁶. This criterion is useful to make the last evaluation of the democratic legitimacy of an NGO. In fact, responsiveness can show us if the requests, concerns or the vision of the supporters are adequately represented in order to influence a political decision making process⁵⁵⁷. We will use this last criterion to understand if the NGOs close to the legislator have sufficiently taken into account the interests of the NGOs with which they have collaborated to build their discourse.

The formula we use to prove the democratic legitimacy of an NGO will be measured by how close

⁵⁵³ *Ivi*, p.15.

⁵⁵⁴ STEFFEK J. et al. 2010, pp.115-117.

⁵⁵⁵ *Ivi*, p.120.

⁵⁵⁶ *Ivi*, p.111.

⁵⁵⁷ *Ivi*, pp.110-111.

an NGO comes to meeting the five criteria. We will evaluate NGOs on the basis of these criteria in the conclusions of this thesis. This will allow us to understand if, by responding to these criteria, NGOs satisfy the transmission belt concept, in order to evaluate their potential to create legitimacy and to influence the EU law making process on conflict minerals.

2.7. Debating the legitimacy of NGOs

Obviously the differences between NGOs are huge, depending for example on the issues they work on, the problems they fight, the funding, the capacity and the credibility they have. As a result of their mode of action and their composition, there are often difficulties in establishing whether they represent (or not) the individuals who belong to it. One of the most widespread criticisms is well summed up by Anderson. He states that some NGOs are formed and composed by a small group of high professional people coming from rich-western elites. In this case NGOs are not managed with and for the people in a bottom-up approach and thus their democratic legitimacy is questioned⁵⁵⁸. For example, a member of Amnesty International declared in an interview that, contrary to twenty years ago, where people of various social backgrounds participated in human rights meetings, today he sees only lawyers or human rights professionals⁵⁵⁹. Furthermore, Anderson assumes the "victory of democracy through international civil society" organisations as an illusion⁵⁶⁰. In this thesis, however, we will not deal with the question of whether NGOs contribute with their debate to increasing the level of democracy of a certain society. We know many criticisms exist and we take note of this.

This thesis does not need to claim broad generalisations on the subject, such as Anderson's view, according to which, INGOs are international civil society and therefore "the voice of the people of the globe, the voice of 'world opinion', and so states and international organisations must make a place for these NGOs at the negotiating tables, in the halls of power"⁵⁶¹. Nevertheless we share the idea that INGOs are interested in increasing their power and authority within governments, citizens, corporations and other IOs. Therefore let us consider these criticisms as a starting point for a reflection on the legitimisation strategies of NGOs to make a norm accepted. Reality is not as simple

⁵⁵⁸ ANDERSON K. *The Ottawa Convention banning landmines, the role of international non-governmental organizations and the idea of international civil society*, European Journal of International Law, 2000, pp.91-120;
KAMAT S. *The privatization of public interest: theorizing NGO discourse in a neoliberal era*, Review of International Political Economy, 2004, pp.155-176;
CLARKE G. 1998.

⁵⁵⁹ ANDERSON K. 2000, p.120.

⁵⁶⁰ *Ivi*, p.112.

⁵⁶¹ *Ivi*, p.111.

as some scholars suppose. Moreover, among the main critics we find not only scholars but also many politicians and governments to whom certain policies of some NGOs are bothering, as we state in precedent paragraphs⁵⁶². There is certainly a problem of legitimacy, which is linked to that of representativeness and that sometimes raises questions about a healthy form of democratic representation and balance of powers.

In the first part of this thesis we have tried to highlight some aspects of the NGOs that allow them to gain legitimacy. These include their active participation in international institutions, their widespread representativeness and their ability to involve the masses. Some theoretical questions, however, remain unexplored and we will focus on these dynamics in the next few paragraphs. This work allows us to better understand certain aspects not addressed by the literature. In fact, although some authors have applied the concept of legitimation to some case studies related to NGOs, we find that many conceptual aspects have not been studied.

2.7.1. The roots of legitimation

Legitimacy is imperative in foreign policy and international politics. The process of legitimation has an impact on material developments of some policies⁵⁶³. In fact, if an organisation such as an NGO is legitimised, by law and its supporters, to participate in the law making process, this clearly has an influence on politics. This is the reason why we approach the concept of legitimation strategies to NGOs.

When it comes to legitimate organisations, there is a general assumption or perception that the actions of an entity are desirable, adapted, or appropriate in a socially constructed system of norms, values, beliefs, and definitions⁵⁶⁴. Our focus is in analysing how the great international institutions, as well as the national (but also local) governments, work with different types of organisations, especially NGOs, to write a law and develop policies. This process occurs fundamentally because the NGO, as an actor in IR, is entitled to intervene, propose, discuss with the legislator and other stakeholders. We therefore try to understand: where are the origins of the legitimacy that are given to a certain actor who wants to try to influence a certain legislative process?

⁵⁶² Especially when we described the four modes of NGO-state interactions by Ahmed and Potter: here we remark the case of 'NGOs as opponents of states'.

⁵⁶³ GODDARD S. E., KREBS R. R. 2015, p.13.

⁵⁶⁴ MONIN P., CROIDIEU G. *Les stratégies de légitimation des organisations renégates*, M@n@gement vol.15 no.3, 2012, p.254.

We would like to start with affirming that human nature plays an important role in the legitimization process. In fact we must not forget that an NGO legitimises itself thanks to the work of human beings who relate to other human beings, who may work in the government or in other associations or lobbies. This is why, when analysing the origins of legitimacy, it is important to take this aspect of human nature into consideration. In fact, "human beings are both meaning-making and deeply social animals"⁵⁶⁵. Humans tend to justify a large part of their action with meaning : "that is why the human mind readily imposes an interpretive framework on disparate pieces of data, seeing order even when there is none"⁵⁶⁶.

In the case study considered by this thesis, we realised how important the relationships between the various human beings working in organisations and institutions are. They have the opportunity to see each other often, build relationships of trust and mutual respect. Clearly every actor must submit to different rules, which are imposed by their own employer. However, we must not forget that human relationships, in this type of political works, sometimes play a leading role. Certainly, personal skills and qualities are essential, but first and foremost, the use of language and more generally of a discourse can all help create the ideal conditions to increase the legitimacy of an actor.

In this part of the thesis we focus briefly on the various types of legitimacy starting from Max Weber's studies on ideal-types. We investigate the conditions that lead actors to be defined as available and interested in obeying⁵⁶⁷. Using this method, we could link these actors to empirical research.

In modern societies, the system of political rule obtains legitimacy from legal rules that designate authority, power and those who exercise it. The rules also specify the ways in which they can be modified. In this way the rules also define the purpose of power, which obtains legitimacy from them⁵⁶⁸. But according to what principles? Thanks to Weber we can identify three principles of legitimacy, namely: the traditional, the rational or legal and the charismatic⁵⁶⁹.

In the first case, the origin of legitimacy lies in the tradition, habits and customs that characterise

⁵⁶⁵ GODDARD S. E., KREBS R. R. 2015, p.13.

⁵⁶⁶ *Ibidem*.

⁵⁶⁷ FERRARESI F. *Genealogie della legittimità. Città e Stato in Max Weber*, Società Mutamento Politica, vol.5, n.9, Firenze University Press, 2014, p.149.

⁵⁶⁸ COTTERRELL R. *Law's community: legal theory in sociological perspective*, Oxford University Press, 1995, p.136.

⁵⁶⁹ NETELENBOS B. *Political Legitimacy Beyond Weber: An Analytical Framework*, Springer, 2016, pp.33-35.

the history of authority. The continuity of power is represented by the ability of authority to refer to the history of society, which is commonly shared. Command and obedience are legitimised by traditions, which govern relations with authority. In the second case, the origin of legitimacy lies in the leader's charisma. The person who wields power has the ability to exercise it thanks to extraordinary, exceptional or even supernatural personal qualities⁵⁷⁰. In this case, the institutions and the political system are weaker than a leader's ability to impose themselves on society. The leader is therefore legitimised through personal expectations and beliefs that allow the management of command and obedience. In the third case, the source of legitimacy is given by a system of bureaucratic and institutional mechanisms. Law and order prevail as they are considered by all to be superior in the public interest. Command and obedience are legitimised and prescribed by the rules⁵⁷¹.

As for our practical case of NGOs, we find ourselves today in a system of democratic legitimacy within which the three types of legitimacy are interlinked. As demonstrated by our empirical research, NGOs interact with the legislator through laws that consider them to be legitimate actors. The authority, in this specific case the EU, has historically and progressively accepted the NGO actor as an interlocutor representing a certain social group. NGOs relate to the legislator according to the command and obedience codes they have learned from historical experience. In this sense, older NGOs have an accumulated benefit from experience. In the second case, the ability of an NGO to produce quality leadership, with high performances and charisma, can favour the relationship with the legislator. Even in the reverse case, the most charismatic representatives of the institutions, with more knowledge and sensitivity towards the NGO actor, will be able to better manage the command-obedience relationship. We have observed directly during our field interviews, how some leaders, both in institutions and in NGOs, are more capable than others of producing results and reaching important compromises. In the third case, the source of legitimacy is derived from the rules and laws that historically prevail over the public interest. With this in mind we have studied the bureaucratic, legislative and institutional mechanisms that allow NGOs to interact with the legislator. It would seem that today this third origin of legitimacy is the preponderant one. In a complex and bureaucratic system such as that of EU institutions, the rules governing the relationship between actors are particularly relevant for the management of the command-obedience relationship.

⁵⁷⁰ *Ivi*, p.36.

⁵⁷¹ *Ivi*, pp.33-43.

The three principles of legitimacy classified by Weber can interact with the sources of legitimacy highlighted by Matheson.

We start first from the consideration that among the actors, the social group is the most important foundation of power, the basis of institutions⁵⁷². In IR it is within a state that the processes of legitimization of social and political groups take shape. According to Ferraresi, "the state is essentially a political group in which power is rationalised and objectified in an institutional form, while group action represents the precondition of any order of the political group, and therefore also of the processes of legitimization of the state and of the command-obedience relationship in which they are expressed from a practical-empirical point of view"⁵⁷³. These legitimization processes take place within institutions, which are the expression and objectification of power⁵⁷⁴. In this sense, the NGO actor represents a social group with specific interests, which fall within the private sphere. They confront each other within institutions, which are like expressions of social groups. We can therefore speak of private interests, represented by NGOs, which confront the public interests represented by the institutions. This command-obedience relationship, between public and private actors, is legitimised within the institutions, following the mechanisms imposed by rules and laws.

In fact, institutions are only the partial rationalisation of a social group. It delegates power with an agreement of legitimacy, summarised in the command-obedience relationship. This agreement allows the holders of power to find obedience and disposition from the dominated,⁵⁷⁵ in our case the private social groups whose interests are represented by NGOs. Power, is therefore based on the disposition to obedience on the part of individuals. Obedience is obviously subject to rules and norms, which make understanding possible⁵⁷⁶. In this way, a hierarchy is established through which the legitimacy of producing norms is recognised to a person or an order. The norm therefore assumes the function of mediating between those who hold power and those who suffer from it, who recognise through the law the command of the authority⁵⁷⁷. The norms produced are considered legitimate, as also pointed out by Weber: "political rule should be considered legitimate"⁵⁷⁸.

The command-obedience relationship therefore interacts in accordance with Weber's principles of legitimacy and allows for an understanding of the legitimacy of power. Within the agreement of

⁵⁷² FERRARESI F. 2014, p.147.

⁵⁷³ *Ivi*, p.146.

⁵⁷⁴ *Ibidem*.

⁵⁷⁵ *Ivi*, pp.147-158.

⁵⁷⁶ *Ivi*, p.147.

⁵⁷⁷ *Ivi*, p.148.

⁵⁷⁸ NETELENBOS B. 2016, p.34.

legitimacy we find various groups and actors representing private interests. Among them are NGOs but also many other interest groups, such as associations representing the interests of industry. All the actors involved in a certain topic, public or private, are entitled to participate in the production of new standards and processes.

There are several sources of legitimacy, defined by Matheson that are useful for our study. The first concerns the right of command and the obligation of obedience which are derived from the rules, both legal and customary⁵⁷⁹. The second source of legitimacy is the contract. In this case, command and obedience are governed by a social contract that establishes the obligations of those who hold the power and those who suffer from it (power holder and power-subject). Both have mutual rights and duties⁵⁸⁰. The third source of legitimacy concerns the compliance of command and obedience with universal principles. The latter are considered universal, if shared by all human beings⁵⁸¹.

There are also other sources of legitimacy which include command and obedience. Let us first consider the sacredness of authority or the norms, which prescribe command and obedience⁵⁸². Another relevant principle for our thesis is that of expertise. Command and obedience are considered legitimate because those in power have the skills considered best to exercise their role⁵⁸³. Another source of legitimacy is the approval of those who hold power (power-holders) by those who suffer it (power-subjects)⁵⁸⁴. This can be done with the approval of the people or with legal or constitutionally established procedures, such as elections. Another source of legitimacy is the personal relationship that can exist between power-holders and power-subjects. Loyalty and trust form the basis of the relationship⁵⁸⁵. Another source is identified by the personal qualities of the power-holder. In this case the power-subject obeys because of a belief in the virtues and leadership abilities of the power-holder⁵⁸⁶.

In our case, the contract that legitimises the relationship between NGOs and the European legislator is represented by the EU rules of lobbying, which is widely discussed in this thesis. Customary rules are also present in the relationship between legislator and NGO and these also include

⁵⁷⁹ MATHESON C. *Weber and the Classification of Forms of Legitimacy*, The British Journal of Sociology, Vol. 38, N.2, Jun. 1987, p.201.

⁵⁸⁰ *Ibidem*.

⁵⁸¹ *Ibidem*.

⁵⁸² *Ivi*, pp.201-202.

⁵⁸³ *Ivi*, p.202.

⁵⁸⁴ *Ivi*, p.203.

⁵⁸⁵ *Ivi*, p.204.

⁵⁸⁶ *Ivi*, p.205.

universal principles. Furthermore, NGOs must abide by the principle of the sacredness of authority or norms, otherwise they could not contribute to the legislative process. The mutual respect between actors, the trust and loyalty on which the personal relationship between power-holders and power-subjects is based, is revealed by the interviews contained in this thesis. Even personal qualities, the last source of legitimacy highlighted, are considered as a successful legitimization strategy for an actor to employ. Obviously this depends on the officials of the institutions and the representatives of the NGOs at a certain time. As we read in our empirical case, some of these actors have a tendency to change rapidly, for many reasons, starting with those related to career. This is especially the case with EC officials or MEPs linked to elections. It is evident that charisma, as already highlighted by Weber, is a very important quality that can favour the process of legitimising an actor. Conversely, a less charismatic person or someone who is charismatic in the wrong way or culturally insistent could equally undermine legitimization strategies. Also for this reason it is helpful to remember that "political legitimacy is never final. It is an ongoing process"⁵⁸⁷.

2.7.1.1. Discourse and legitimation

"Discourse is always subject to challenge and is always laced through with contradictions. Hegemonies may be disrupted, creating space for political change. As contradictions accumulate, the space for resistance grows as well"⁵⁸⁸.

The human being thus creates a meaning to justify action, in our case it creates a sense for the mission which a certain NGO has undertaken. To turn to other actors and convince them of the veracity of their idea, the human being uses discourses. Discourse is used to describe the reasons of some choices they have taken, as well to justify some specific actions they have done. The fact of giving sense to actions and building justified reasons is essential to the existence of all subjects, individuals as well as organisations. This happens even if the actions are not properly logical or reasonable. As humans live in communities, they need the consent of other individuals and in order to enjoy the approval of others, individuals seek to provide best the reasons to defend their discourses and actions. The other individuals must understand and believe that the explanations given by a certain individual, even if s/he has a strong character, or is well-known, are valid, so s/he must always justify their speech. If this does not happen, the pretensions will be not accepted and could be even ignored. To get closer to our case study, we can therefore say that for the

⁵⁸⁷ NETELENBOS B. 2016, p.64.

⁵⁸⁸ KREBS R. R., LOBASZ J. K. *Fixing the meaning of 9/11: Hegemony, coercion, and the road to war in Iraq*, *Security Studies*, 2007, p.451.

representative of an NGO who wants to influence the legislative process, it is essential to seek approval from the counterpart, justify their speech "providing reasons for" their "actions and making sense of others' actions"⁵⁸⁹.

In the process of legitimation of a political position, stakes are often high, whether they concern ethical or moral principles, material interest or other positions. For this reason, many different strategies are considered and developed, including a sophisticated use of rhetoric. In this step, the use of language must be particularly careful, including the use of symbolic language. It is important to stress that all parties must justify their speech in the best way, even if the political or economic weight of the individual subjects or organisations is clearly different⁵⁹⁰.

Sometimes, human beings can also legitimise a certain actor even if they do not entirely share stated positions or when adverse groups may be in agreement on a certain concern or situation. This also depends on the vision and the ability of the actor to argue a certain position. Legitimacy can also be determined by the strategies, the balance of power and the relationships between the various actors or institutions. Political actors and elitist groups, work strategically on legitimation, as they are part of a social environment which "simultaneously makes possible and confines strategic action"⁵⁹¹. They need to participate to the discourse even if they are elitist, for achieving their goals. To achieve their goals they use a lot of resources and techniques. Perhaps most interesting to our enquiry, we notice a 'culture of belonging' among their most characteristic resources, which gives meaning to their action and to their words. In this case, NGOs refer to their charter, their history and their presence in the territory, or in third countries in the case of INGOs.

Even the donors, in particular the private ones, are often very attentive to the public discourse built by the NGOs, as well as their followers. It is necessary to emphasise that the public is attentive and sensitive to the rhetorical contest. Given the way in which NGOs try to persuade the public, it is therefore important for those who finance the organisation. Furthermore, discourses towards legitimating a certain position can build the basis for policy debate, so we could consider this action as central to an actor's strategy. A political actor is strategic and automatically increases its legitimacy, if it has the capacity to conceive a persuasive action which is capable of influencing a normative change. The other way around asserts that "legitimation exerts effects on politics by imparting meaning to action"⁵⁹². So the action, to be effective and cause a change, must make use of

⁵⁸⁹ *Ivi*, p.14.

⁵⁹⁰ *Ibidem*.

⁵⁹¹ *Ivi*, p.15.

⁵⁹² *Ivi*, p.16.

an incisive discourse. The capacity, therefore, to use the language is imperative for a political actor in order to gain visibility and power. In this way and thanks to legitimacy acquired, an actor could have an influence over their political project. This is the reason why politicians all over the world use a large part of their "material resources and political capital to rhetorical battle"⁵⁹³.

The following chapter will explore how NGO engage with legislator thanks to their legitimization strategies, built on discourses and those of their partner organisations.

2.7.1.2. Audience and legitimization

As we understood, legitimacy is a tool that can be used in order to justify a policy. The process of legitimization has a significant effect on the constituent elements of a norm. We assume as well that legitimacy affects political processes and outcomes⁵⁹⁴. We have considered the importance of discourse as strategy of legitimization. However, it is equally important to consider the audience to which the actor is addressed. In fact the legitimization process differs depending on the type of audience. It is indeed necessary to consider the different sensitivities of the public to which the political actor is oriented. He must consider the passions, beliefs, feelings and commitment of an audience that is not universal but often has different sensitivities and values.

As we stated, the elites use language to legitimise themselves with the intention to increase their power. In fact, legitimacy is a form of power that can increase an already distributed material power. To increase the power, an actor tries to have an influence through his position. To reach this target, it is therefore necessary to attract the consent of a certain audience, which serves to mobilise it and to legitimise the actor. Finally, the public recognises the legitimacy of the actor and the government authorises the actor's contribution and mobilisation to decide on a certain policy⁵⁹⁵.

To explain this in practise, if considering our case study, we state that NGOs use a certain discourse to legitimise their positions, towards a certain audience. They then acquire a certain position within the society. They therefore begin to have greater influence, thanks to the position acquired. Their consent and their power increases because "discourse is both the product, and productive, of power"⁵⁹⁶. Over time, more and more audiences are mobilised and in turn legitimise the NGO actor.

⁵⁹³ *Ivi*, p.6.

⁵⁹⁴ GODDARD S. E., KREBS R. R. 2015.

⁵⁹⁵ *Ivi*, p.18.

⁵⁹⁶ *Ivi*, p.17.

In the end, the legitimacy obtained means that the legislator allows the actor to contribute to the formation of a certain policy, of certain legislation or, as in our case study, the EU Conflict Minerals Regulation.

We should underline that in some cases an high level of legitimacy is not necessary. This happens, for example, when the audience is not careful, or, more frequently, it is focused on other policies; in this case, it is as if the legislator is distracted by something more important or urgent. Moreover, a certain policy may not be legitimised if there is a way to hide it from public opinion. For instance, public persuasion can be irrelevant if the media, bureaucrats or officials are able to divert the attention of the audience on a certain policy or debate. Alternatively, in the opposite case, it could transpire that for an actor it is necessary to legitimise a choice even after having taken a decision or, when the public realises that a decision has been taken. This shows that legitimacy is necessary, but with different degrees, depending on the public visibility of a certain policy and the audience of reference.

Finally, the audience can be used to mobilise resources. We must consider that often a public actor needs to mobilise resources and therefore needs visibility in order to reach more power. This means asking the audience to finance an action with their own resources in order to find ways to reach legitimacy. In this case it is necessary to make information available to the public as much as possible. This also happens, for example, when an actor is looking for consent or approval⁵⁹⁷. NGOs use this strategy of mobilising resources with large financing and fundraising campaigns. These campaigns target first their usual audience, the subscribers and the regular donors. Furthermore, NGOs make use of internet, social networks, the press, etc. to mobilise resources, increase visibility, acquire legitimacy and finally reaching the power to influence a certain law.

2.7.2. The winner of the war of words

The process of legitimation is in principle open, but the skills of actors, playing the game for influence of a policy, are not the same. The different power of the players is a fact and many factors have an effect on their ability to legitimise a discourse and a political position. In particular, six factors are crucial in shaping the legitimation process and could determinate the success or the failure of the process⁵⁹⁸. These factors are as follows:

⁵⁹⁷ *Ivi*, p.18.

⁵⁹⁸ *Ivi*, pp.26-27.

I) The speaker: it is evident that the ability of a speaker to convince a certain counterpart, the use of specific words, the authority s/he embodies, the ability to elaborate convincing proposals, the credibility deriving from a personal and public journey, can have an essential added value.

II) The context: to win the battle of legitimization, it is extremely important to consider the context in which the different actors are confronted. Not every institutional arenas have the same value (we should consider both domestic and international institutional rules). In principle, the following statement can be kept in mind: "the more institutional rules provide openings to opposition politicians or civil society to express alternative perspectives, the less enduring legitimization victories are"⁵⁹⁹. Moreover it is important to consider that during ordinary periods, common sense coincides with the dominant discourse, which represents the basis for starting the debate to legitimise certain policies.

III) The audience: the speaker must absolutely understand who s/he is referring to in order to legitimise a speech. This is because the audience represents the judge who proclaims the winner of the rhetorical battle. It must be emphasised that legitimization strategies of the speaker are particularly difficult in highly fragmented societies. Moreover it is more difficult to legitimise the same discourse when referring to a national and international audience at the same time or with the same strategy.

IV) The content: to legitimise a certain position, the content of the discourse must fall within the common canons of the formulation of rhetoric.

V) The rhetorical technique: there are many techniques that a speaker can use to legitimise his speech. These include: the use of metaphors, figures of speech, the tone used in addition to all the analogies used based on the audience of reference. The use of rhetoric has been summarised in particular between storytelling and the topic. The first assumes an unaware public or one that the speaker thinks confused. The second requires a more attentive audience, therefore requiring a more likely explanation of a certain matter, a correct evaluation of costs and benefits, a certain knowledge of the rules⁶⁰⁰.

VI) The age: age, history and experience of a certain organisation certainly plays a huge role in its

⁵⁹⁹ *Ivi*, p.27.

⁶⁰⁰ *Ivi*, p.28.

capacities for action, influence and effectiveness⁶⁰¹.

In conclusion we can state that "legitimation is a war of words"⁶⁰² and the winner is certainly the one who best knows how to combine these six factors to carry out his action.

2.7.3. Drawbacks and complications of legitimation

A fundamental characteristic of the legitimation process is that even after having conquered a certain position, it does not always secure its possession because "the effects of legitimation are not constant through time and space"⁶⁰³. Volatility and lack of consistency are therefore characteristics of legitimation that can lead to undesirable effects. Consequently to consolidate its own position and that of its own organisation, an actor is driven to create alliances, to lean other subjects that share the same battle. Indeed "legitimation works when it is deeply attentive to coalitional politics, allowing potential allies to grasp hold of a common vision and doing an end run around would-be alternative factional combinations"⁶⁰⁴. In the case study analysed for this thesis, many of the NGOs considered they had joined each other in networks and alliances. This closer collaboration was made for many reasons, but one key outcome can be seen to be the increase of one's own legitimacy towards the legislator.

The process of legitimation and its effects could be volatile even for the foundations on which they are based, namely international politics. In fact "much of international relations is based on talking. State representatives argue, threaten, reassure, flatter, cajole, and lie all in an attempt to further their goals in international politics"⁶⁰⁵. This implies that the choosing of an interlocutor is extremely important; given that many agreements and interactions are based on talk, some interlocutors could prove to be unreliable.

Other complications can arise from the cultural context of reference. This is because legitimation is strictly connected to a certain specific culture. The power of influence and to get legitimacy, depends as well on the capacity to mobilise personal cultural resources. Culture is used to establish the rhetoric which raises the authority of a speaker in front of an audience. Legitimation also depends on the choice of the speaker, the institutional and empirical contexts in which they operate.

⁶⁰¹ MONIN P., CROIDIEU G. 2012, p.254.

⁶⁰² GODDARD S. E., KREBS R. R. 2015, p.26.

⁶⁰³ *Ivi*, p.30.

⁶⁰⁴ *Ivi*, p.33.

⁶⁰⁵ *Ibidem*.

Wrong cultural references could be a fatal mistake for an unprepared actor.

Finally we point out that legitimization is becoming a harder process to achieve. This is due to the social media revolution which also impacted politics in many ways. The information revolution and visibility of actors and policies has "increased dramatically the demand for legitimization" as well⁶⁰⁶. With the spread of social networks, many more actors have the possibility to address issues to the public sphere and at the same time traditional leaders could be less trusted. In fact it is more difficult for the audience to recognise the leaders of reference, the most credible and most prepared actors. Nevertheless, it is important to underline that a trusted actor, with experience and legitimacy previously acquired, is difficult to remove in the short term. A new actor would hardly be able to increase their legitimacy in a short time by depending solely on social media. Being a legitimate actor requires more effort on a variety of platforms, as we have already described.

In conclusion, legitimacy represents a particular form of power in politics. Getting it is certainly not easy and is not for beginners. In the case study of this research, we will be able to observe how the most influential actors closest to the legislator have certain characteristics that we have analysed so far. They have been working for a long time on a certain issue, they know perfectly well their interlocutors, they are familiar with the cultural environment of reference, they are good speakers and they come from very prestigious organisations that are used to working together to create powerful networks. Their legitimacy is high: they are credible because they exactly know their subject. This is also why they manage to have an influence on the law approval process.

Conclusion

This chapter is the theoretical part of this thesis in which it was necessary to explore the issues linked to the legitimization strategies of NGOs to make a norm accepted. This theoretical part will be reflected into the practice in the next chapter. These detailed descriptions of the strategies of NGOs have contributed in part to proving their legitimacy. In particular, the participation of NGOs within EU institutions has to be considered as well as the specific rules and guidelines that NGOs can use to influence the legislative process.

It was also fundamental to understand and explain in detail the lobbying and advocacy activities. In this chapter we have clearly distinguished the two different activities, which unfortunately many

⁶⁰⁶ *Ivi*, p.35.

NGOs are also unable to distinguish. We also understood this from our interviews. We explored the strategies, the characteristics, the spaces in which the lobby work takes place. Furthermore, it was important to underline how much human and financial resources can make a big difference in the effectiveness of this work.

To supplement the explanations on the activities of NGOs, we also discussed the concepts of legitimacy and legitimation. Some criticisms have been made by the NGOs themselves, explaining that too often today NGOs are kept on their own by professionals. However, their actions to increase the level of democracy within a certain society would therefore be in doubt. We then understood the origins of the concept of legitimisation, which is largely influenced by the relationships developed between human beings. We then understood how construction, the use of a certain discourse and language in general, are to be considered as fundamental strategies for success. In order to be influential, it is necessary to justify one's position through discourse, provided that the actor was first legitimised. We will understand later that, in practice, a good speech is not enough to be successful in lobbying. There are in fact many other factors and, above all, the power relationships that come into play between the various actors.

Finally, there is the reference audience, which must always be carefully considered. NGOs interact with many different actors and consequently change the language used. In fact, language is linked to the audience because it can increase or decrease the degree of legitimacy. The winners of the "war of words" will be those who use the best speaker in the most favourable context, in front of the friendly audience. Furthermore, the winners cannot be considered immune from the loss of legitimacy. Their victory is always volatile in time and space, so they must continually defend it.

What is certain is that today NGOs are a legitimated actor in foreign and international politics. Will this be enough to give NGOs the opportunity to influence a norm?

Chapter 3: The legitimization of NGOs: from the war for minerals to initiatives on resource related conflicts

"Where does the coltan used in Ruanda come from?"

"It's like a liar's ball. Everyone is invited to the party. And everyone comes to lie. But when we are there, we act as if everything is serious, as if we are not lying. And everyone takes it seriously. This is the mining sector. So everyone knows that I'm lying, the other one is lying, but we pretend we're telling the truth. And so everyone knows where Rwanda's minerals come from⁶⁰⁷".

⁶⁰⁷ In relation to the investment of 16 million dollars and opening of the factory to process coltan in Kigali. ANONYMOUS interview with a member of an NGO in Bukavu, DRC, September 2017.

Introduction

In this next chapter we will detail the main activities carried out by the NGOs considered by this thesis, as well as the other actors interviewed during our field research. In the first part of the chapter the focus is on: the description of the actors interviewed; their activities and commitment to the conflict minerals issue; the relationship between these organisations and their common characteristics; the tools they use in their work of lobbying and advocacy. We will use the interviews that we carried out in the field, namely in Goma (North Kivu, DRC), Bukavu (South Kivu, DRC) and in Brussels (Belgium). It will be understood how these organisations have worked to build their discourse through research for information, studies and relationships with beneficiaries and authorities. The NGOs analysed have several ways to search for information. Some work independently and sometimes also employ independent professional researchers. These NGOs who work alone can consult various NGOs on the field, but maintain total autonomy in constructing their discourse. This way of working is typical of Amnesty International or Global Witness. Other organisations, on the other hand, work in stable networks, i.e. with other subjects who share the same visions and objectives. These NGOs build the discourse with their partners and with the NGOs with which they collaborate on the field. This is the case, for example, with EurAc and CJP. We need this chapter to understand how NGOs collect information, study a problem and seek a common position to be asserted towards the legislator. In this chapter, we will examine in detail the lobbying work done by NGOs at the EU level and how the work of building a discursive strategy to influence a norm has been prepared. There will be some interviews that explore how NGOs can try to influence a decision-making process, as well as how to inform public opinion on a specific issue.

Later in the chapter, we will examine some initiatives that have been adopted at regional or global level and we will study the key players who have worked or try to have an influence on these initiatives, with particular attention to the role of NGOs. It seems clear to us that, especially to work with the legislator, NGOs must already have a certain degree of legitimacy and the ability to skilfully enter into the decision-making process. The pressure and work of the NGOs was significant and evidently had results. It is essential to understand that the legitimisation strategies of NGOs have been built up over long periods of time. In fact, as we have seen previously, the process by which NGOs have understood how to interact with international institutions has been ongoing for many years.

It could be said that the process of legitimization of NGOs working on natural resources started in the nineties, with the emergence of the conflict in Central Africa. In fact many NGOs had worked and specialised during the nineties and the turn of the century, in influencing the legislator and in the issue of conflict related to resources exploitation. Moreover, NGOs have been partly responsible for making the problem known to society and institutions. They studied the conflict in the DRC for a long time and the interaction between various actors has led to the promotion of the several initiatives that we will present in this chapter. They were able to exploit the institutional mechanisms that allowed them to have an influence on the process of approval of the laws. Generally, they were able to build their discursive strategies that allowed them to keep a profile of credible actor. At the same time, NGOs legitimacy is at stake during the negotiations: unfortunately, not all NGOs' discursive strategies will prove to be productive.

With a focus on the process of approval of the Conflict Minerals Regulation, we will know how and why these NGOs focus on this issue. It will be shown how NGOs have reconstructed information so that they can then form a political position and defend it before the appropriate bodies. We will understand as well, how NGOs have created their networks or coalitions to effectively lobby the EU institutions. They did it because the possibility to act together could increase the political weight and the credibility of a sustained position, although, some NGOs prefer to work mainly alone. We will show how NGO/legislator and NGO/society interactions have enabled certain organisations to play a role in the law approval process. We will take note of some of the main NGOs actions throughout society that have characterised the negotiation process. In fact, part of the work of NGOs includes advocacy work, especially public campaigns, in order to make their battles known to a wider audience and to be supported vis-à-vis the legislator. This allows them to increase the number of their supporters, to collect funds and therefore to have more weight and legitimacy in the negotiation process of the law.

Certainly, the players were multiple and the legislator had to mediate between various different interests. Influence in institutions takes place in different spaces, including the EC, the Council and the EP. Using our interviews, we will understand in which contexts NGOs have the most opportunity to express their discourse and positions. We will describe the main partnerships that have been created exclusively to influence the EU regulation, including those that include NGOs, industries and governments. Finally we will compare the various discursive strategies that have been used to work on this specific regulation, trying to understand if there is a winning strategy and who has used it.

3.1. The actors interviewed

We have identified two groups of actors, arguably the most relevant to this study, because of their activity and legitimacy in influencing the EU Conflict Minerals Regulation. The first group of actors interviewed is based in the eastern DRC and operates mainly at the local level, in the sense that their actions are concentrated for the most part in the areas in which they are based. This first group of actors is not only specialised in lobbying work, although sometimes it also deals with this. In fact, the majority of these NGOs carry out various activities, as we will see later. These actors we have chosen for the thesis are based and operate in the two provinces of North and South Kivu, in the DRC. They are not just NGOs, but sometimes they are legally registered in another form and achieve different activities. However, these actors have in common the research, documentation, knowledge and action in the domain of natural resources. This is why we have selected them, also thanks to the support of our field research partner, CEGEMI.

The second group of actors interviewed is mainly based in Brussels, Belgium. Some of them are internationally and nationally advocacy-oriented, well-known NGOs campaigning for human rights, lobbying governments, groups or MNCs and for mobilising millions of people around the world. The legitimacy of this group of actors, Amnesty International, EurAc, Commission Justice et Paix (CJP), is highly recognised for each of these organisations, as we will see. In order to have a more complete vision, we added in the second group of interviews some other actors, which are not NGOs. In fact, as described below, we interviewed MEPs, EC officials, an industry representative and other authoritative voices who worked on the EU regulation.

The figure below shows the list of interviews carried out for this thesis, which includes the name of the organisation, the interviewee and the date of the interview.

<u>Table 2. First group of actors interviewed from Goma and Bukavu, the DRC.</u>		
Observatoire gouvernance et paix (OGP) NGO	Erik Kajemba (Founder and Executive Director)	Bukavu, 25/9/2017 Paris, 23/4/2019
Bureau d'Etudes Scientifiques et Techniques (BEST)	Philippe Ruvunangiza (Executive Director)	Bukavu, 9/10/2017 Brussels, 30/4/2019
Xaverian Brothers	Franco Bordignon (Missionary)	Bukavu, 22/11/2017
Max Impact Asbl	Safanto Bulongo (Coordinator)	Bukavu, 5/12/2017 Brussels, 29/4/2019
Groupe d'Appui à la Traçabilité et la Transparence dans la gestion des Ressources Naturelles (Réseau GATT-RN)	Fidel Bafilemba (Coordinator)	Goma, 6/12/2017
Save Act Mine	Jamal Usseni	Goma, 7/12/2017

	(Founder and General Director)	
Observatoire de la société civile Congolaise pour les minerais de paix (OSCMP)	Alexis Muhima Shinja (Executive Director and Lawyer) Brigitte Bashali Mubuya (Coordinator Dynamique Femmes et mines) Nzuki Eli (Coordinator Maison de la gouvernance du secteur extractif) Gerald Mashusha (Collectif des associations pour le développement de Bwuabo)	Goma, 7/12/2017
Centre de Recherche sur l'Environnement, la Démocratie et les droits de l'Homme (CREDDHO)	Gaston Kamate (Program Manager)	Goma, 8/12/2017
Association pour le Développement des Initiatives Paysannes (ASSODIP Asbl)	Janvier Bakahanaye Murairi (Founder and President)	Goma, 8/12/2017
Réseau pour la Conservation et la Réhabilitation des Ecosystèmes Forestiers (CREF)	Isaac Wiker Mumbere (Responsible for human rights and governance of natural resources)	Goma, 8/12/2017
Réseau d'Innovation Organisationnelle (RIO)	Veronique Miniego (Officer) Didier Dimule (Researcher)	Bukavu, 11/12/2017
Commission Diocésaine Justice et Paix (CDJP)	Florence Furaha (Manager of natural resources observatory)	Bukavu, 11/12/2017
Comité Provincial suivi activités minières (CPS)	Bienvenue Mapendo (Program Manager)	Bukavu, 12/12/2017
Justice pour tous	Raoul Kitungano (Coordinator) and president of COSOC (Coalition of Civil Society Organizations in the Great Lakes Region)	Bukavu, 15/12/2017

Table 3. Second group of actors interviewed from Brussels, Belgium⁶⁰⁸.

Group of the Progressive Alliance of Socialists and Democrats	Anonymous (Assistant to a Vice President of the EP in 2015)	Brussels, 8/5/2015
Group of the Progressive Alliance of Socialists and Democrats	Cécile Kashetu Kyenge (MEP, 2014-2019)	Brussels, 26/6/2015
Amnesty International European Institutions Office	Nele Meyer (Senior Executive Officer, economic, social and cultural rights)	Phone interview, 10/10/2017
The Greens–European Free Alliance	Judith Sargentini (MEP, 2009-2019, Rapporteur on conflict minerals)	Phone interview, 7/2/2019
Group of the Progressive Alliance of Socialists and Democrats	Marta Ruiz Carnes (Advisor to MEP Maria Arena on International trade and ACP ⁶⁰⁹)	Brussels, 25/2/2019
Intel Corporation	Julian Lageard (Public policy Senior Manager in Europe, Middle East and Africa)	Brussels, 25/2/2019
European network for Central Africa (EurAc)	Giuseppe Cioffo (Programme and Policy Officer)	Bukavu, 27/9/2017 Brussels, 27/2/2019 Paris, 23/4/2019 Brussels, 30/4/2019
Commission Justice et Paix Belgique Francophone (CJP)	Santiago Ficher (Advocacy Officer)	Brussels, 28/2/2019

⁶⁰⁸ Some interviews were realised by telephone.

⁶⁰⁹ African, Caribbean and Pacific Group of States (ACP).

Commission Justice et Paix Belgique Francophone (CJP) - EurAc	Friederic Triest (Researcher and Advocacy Officer on natural resources)	Phone interview, 6/3/2019
European Commission	Anonymous (Officer)	Phone interview, 8/3/2019
European Commission	Anonymous (Policy Officer, private sector, trade)	Paris, 23/4/2019

Here below we can read a brief description of the actors that have contributed to the realisation of the field research for this thesis. Let us begin with the first slice of interviews, that were carried out in 2017 in the east of the DRC.

3.1.1. Congolese NGOs and other organisations

The aim of this section is to understand the work that the organisations we interviewed in the DRC do. We also want to highlight the relationships that these organisations have with other actors around the world. This is because it can increase their level of legitimacy. Later in this thesis we will explain in greater depth the details of how their contribution influenced the legislative process of the conflict minerals Regulation.

I) We initially interviewed an authoritative voice of the civil society of southern Kivu. Mr Erik Kajemba is a journalist, founder and executive director of OGP, an NGO working in Bukavu since 2003. The organisation deals with the promotion of human rights through the development of good practices, with particular attention to the mining sector. In this sense OGP works as mediator to resolve the conflicts linked to the land, favouring dialogue and promoting the rights of the local community (land right, right to housing, etc.). The organisation denounces the corruption linked to the trafficking of minerals and is fighting for a trade in resources without any conflict.

"We started to work and to follow up the issue of conflict minerals in 2010. At this time, many organisations began to document the link between the exploitation of minerals and the perpetuation of the conflict. The first advocacy actions OGP carried out were related to the Dodd Frank Act. However, I must underline that mineral exploitation is not the only reason why conflicts in DRC keep going"⁶¹⁰.

The organisation is very well known in the Congolese academic circles and by the European NGOs that have worked on conflict minerals. In fact, the OGP is often invited to share their expert testimony at important international conferences. Interestingly, at the OECD forum, we met the

⁶¹⁰ Interview with KAJEMBA E., Founder, Director and Coordinator of OGP, 25/9/2017.

director of OGP for a second time who was happy to provide an update of the first interview⁶¹¹. In 2011 OGP has been an important actor to persuade activists and decision-makers to review their position on the Dodd Frank Act. They have been lobbying the USA Senate, the WB in Washington as well as the USA Securities and Exchange Commission (SEC). Concerning their work on lobbying for EU regulation, they have underlined that it was easy to obtain results in front of MEPs, but they experienced difficulties when approaching the EC and the Council⁶¹². The organisation also works lobbying the Congolese government, with a focus to improve the governance:

"(...) because even if there is a good traceability system for minerals, it is not possible to achieve local development without having good governance. This could be the only counterpart for local communities. They need to improve their living conditions and the quality of life"⁶¹³.

II) We then interviewed Mr Philippe Ruvunangiza, director of BEST, an organisation founded in 1988, working closely with academic and scientific institutions from different countries (UCB, UCL, UAntwerpen, UGent) as well as IOs (FAO, UNIDO, ICRC, GIZ)⁶¹⁴. The organisation works as consultants and it creates and publishes specific studies on the Congolese mining sector. Their studies are about international and Congolese laws on the sector: they conceive and directs development projects. The BEST is more and more interested in issues of poverty, inequality reduction, community rights and human rights.

"For example, we talked about community sovereignty over natural resources, because we think the solution is to recognise the sovereignty of communities and no longer only the sovereignty of the state. The state must remain the manager, but the resources belong to the Congolese people".

"We also work for issues of awareness of the populations who live in mining areas, mainly artisanal. We did conscientious literacy, with the support of Wallonie-Bruxelles International and in partnership with the ULB. And we arrived at the tenth year of the project. We hope to encourage, in these communities, the emergence of a critical mass of citizens, who can act to ask the reforms that must be obtained because natural resources serve the communities in the best possible way"⁶¹⁵.

⁶¹¹ Mr Kajemba was invited to the OECD forum 2019 in Paris to speak at the session entitled: *Le code minier révisé de la RDC et le règlement de l'UE sur l'approvisionnement responsable en minerais*.

⁶¹² Interview with KAJEMBA E. 25/9/2017.

⁶¹³ *Ibidem*.

⁶¹⁴ Food and Agriculture Organization of the UN (FAO); UN Industrial Development Organization (UNIDO); German Corporation for International Cooperation (GIZ).

⁶¹⁵ Interview with RUVUNANGIZA P., Responsible of BEST, 9/10/2017.

Mr Ruvunangiza is also considered an expert at the international level, which also demonstrates the legitimacy of his organisation among influential actors at global level who work on the conflict minerals issue.

"In relation to mining issues, a few years ago, BEST played an important role in political advocacy following the adoption of the Dodd-Frank Act in the USA. We were the first organisation to say that it was an unfair law, especially for artisanal miners. We immediately got involved to mobilise other local civil society organisations, such as OGP and others. Many of them have done advocacy at different levels and all over the world, in the USA, in Europe, in Canada, in Kinshasa etc"⁶¹⁶.

Mr Ruvunangiza was also invited to speak on 24 April 2019 at the OECD forum in Paris and later on in Brussels on 29 and 30 April⁶¹⁷.

III) We have interviewed and spoken several times with Mr Safanto Bulongo, coordinator of Max Impact. They deal with the governance of natural resources and fights for them to be the engine of development of local communities.

"The organisation works on natural resources with a focus on traceability and mining cooperatives. With regard to traceability, we assess compliance with existing standards. We are also working on taxation and the provincial budget, to understand how the money collected through taxation is invested and how much in development"⁶¹⁸.

Max Impact specialises in lobbying and advocacy; carries out studies and research on socio-economic issues and organises meetings and seminars on the topics in which it is a specialist. Mr Bulongo explained to us how Max Impact worked to exert political pressure:

"We have an advocacy strategy focused on two levels: the first consists in directly contacting the actor who is concerned by a certain question. For example concerning the budget, we will see the budgetary authority, the parliament, but also the governor. If it is a national question, we go directly to the minister concerned. If there is no change or feedback, we move on to the second level, i.e. to act through INGOs"⁶¹⁹.

The organisation is also financed by consulting and research on behalf of third parties. For example,

⁶¹⁶ Interview with RUVUNANGIZA P. 9/10/2017.

⁶¹⁷ On 29 and 30/4/2019, a civil society workshop was held in Brussels. It was entitled: "The EU Regulation on responsible mineral sourcing and its accompanying measures: views from civil society from producing countries". This workshop was organised by EurAc, with the participation of: CordAid, Germanwatch, Heinrich Böll Foundation Colombia, CJP, *Ökumenisches Netz Zentralafrika*.

⁶¹⁸ Interview with BULONGO S., Coordinator of Max Impact, 5/12/2017.

⁶¹⁹ *Ibidem*.

they have been financed by the GIZ to work on some dossiers. Mr Bulongo is also often invited as a speaker at international seminars and conferences. For example, after a first interview at his office in Bukavu, we meet him twice in 2019: at the OECD forum in Paris and at the Brussels forum with civil society and NGOs.

IV) Another interview we organised was with the GATT-RN network, which brings together at least fifteen civil society organisations from eastern DRC that work in the field of exploitation and commercialisation of natural resources with particular attention to the repercussions they have on the ecosystem. It was born in 2011, following the forced suspension of mining activities in the Kivu region. The network strives to improve resource management, for the benefit of local communities, to prevent the violation of human rights and to promote sustainable development. Its main activities are: the coordination of the various organisations that make it up; the creation of ad hoc campaigns; the organisation of political pressure at local and national level; the reporting of illegal trafficking as well as other illegal activities; the promotion of transparency in the trade of resources. During our field research we were able to interview Mr Fidel Bafilemba, coordinator of the network. He explained to us, among other things, their work to try to influence international laws on the mineral trade.

"We worked on the Dodd-Frank law as well as on the EU Conflict Minerals Regulation. (...) Thanks to this lobbying work, for which they also contributed international NGOs, they listened to us. (...) We have concentrated our efforts on the greens from the EP, but also others, such as Maria Arena, who has come here at least three times with a delegation to listen to us. We asked for a law, possibly better than the American law"⁶²⁰.

V) Next actor interviewed is Mr Jamal Usseni, founder and general director of Save Act Mine, an NGO based in Goma with international experience. His organisation has worked for several years on the issues of mineral exploitation and its governance, at regional, national and international level. Save Act Mine is also specialised in the study of formal and informal mechanisms that characterise the ICGLR. Jamal is one of the brave actors who challenged the strong powers of the region, denouncing the corruption present in international initiatives such as ICGLR and other local scandals related to the misappropriation of resources. Also for these reasons he took considerable risks for his initiatives and his work:

"I was already openly threatened by my government and by Rwanda. I had

⁶²⁰ Interview with BAFILEMBA F., Human rights activist and Coordinator at GATT-RN Network, 12/6/2017.

to leave Goma to take refuge somewhere. I denounced them [the traffickers]. I told the authorities: listen, we are facing a system, we are mobilising our population and we are going to give prizes for those people who take a risk and denounce corruption. And the authorities told me to give up"⁶²¹.

VI) Continuing our interviews, we met OSCMP, an observatory who works to promote transparency in the extraction and trade of minerals. The lawyer Mr Alexis Muhima Shinja, the organisation's executive director, explained to us how transparent resource management could be the engine for economic growth and a factor of peace and stability throughout the DRC. The organisation is especially active alongside the communities that live near the mines, monitoring the possible violations of workers' rights and the respect for the environment. Together with him we also interviewed other actors who work in other projects, within the same observatory, including Mr Nzuki:

"We do research work and we publish reports on compliance by companies. We want to demonstrate issues such as respect for the environment, workers and taxation which, if well managed, can improve the general well-being of the population. We focus on industrial mining companies but also on artisanal mines"⁶²².

VII) CREDDHO is a Congolese organisation that has engaged with democracy, human rights and environmental issues since 1998. We interviewed program manager Mr Gaston Kamate who was in charge of research on the issue of conflict minerals.

"Our organisation was born to operate on three pillars: the environment, democracy and human rights. We have five programs, access to justice, the fight against impunity, the right to peace, governance of natural resources, good governance and responsible citizenship and the prevention of torture and surveillance of places of detention. We train and inform communities, local leaders and representatives of institutions on the basis of target themes. We take care of research and documentation, case analysis in the field, related to the three pillars of the organisation. For the promotion of human rights, we take care of monitoring public demonstrations, accompanying victims of violations to the competent courts. We do the daily follow-up of documented cases. We do advocacy with other partners who help us, in documentation and in fundraising. In other projects we mobilise communities to fight against sexual abuse and modern slavery. In addition we are mediators on the existing conflicts between the communities that live in Virunga National Park and the park managers. Currently we have projects that focus on natural resources, in

⁶²¹ Interview with USSENI J., Founder and General Director of Save Act Mine, 7/12/2017.

⁶²² Interview with NZUKI E., Coordinator at *Maison de la gouvernance du secteur extractif*, OSCMP, 7/12/2017.

particular the traceability of minerals. We are next to the miners, the craftsmen and the cooperatives. For traceability, we work in the field with artisanal miners, their cooperatives and the rest of civil society. We have set up two mining observatories with them. The goal is that communities living near mining sites can be the agents of change in the context of mining. To sensitise the authorities, we have published reports, thanks to the information received by our mining observatories"⁶²³.

VIII) ASSODIP works since 2004 to implement and divulge basic civil, political and social rights for rural populations. The aim is to move the NGO closer to rural populations, especially places where the state and its services are absent.

"In 2007 we started to focus on natural resources, especially the problem of the exploitation of children in mining regions. Children work in mines instead of going to school, so they can help their families cope with poverty. We have done research to understand the extent of the problem of children working in mines. We discovered that there were also slave children working in the mines. Then we made awareness on this issue, to alert the population at local and national level"⁶²⁴.

Thanks to the collaboration with various partners, including international ones, the association was able to develop development projects.

"Our organisation has evolved and a UN fund has funded us to promote the reintegration of children who have left the mines. We had the opportunity to teach them trades, such as tailoring, cooking. For training purposes we also give them a kit to start a job and become independent"⁶²⁵.

Other ASSODIP projects include promoting democracy and human rights. In particular, they take care of training staff to monitor and report violations that are found in rural areas. Among the various projects, he worked on minerals alongside the GATT-RN network, especially in advocacy and lobbying activities.

IX) CREF is also a network of organisations specialised in the protection and rehabilitation of the environment, especially forests. Since mining is often the cause of major environmental damage, this organisation has been able to work on this dynamic and relationship with conflict minerals.

⁶²³ Interview with KAMATE G. K., Program Manager at CREDDHO, 8/12/2017.

⁶²⁴ Interview with MURAIRI J., Founder and President of ASSODIP, 8/12/2017.

⁶²⁵ *Ibidem*.

"I deal with human rights and governance of natural resources. At the moment I am working on the mining and hydrocarbons pillar. The aim is to monitor human rights violations and aspects linked to governance in the exploitation of minerals. Through this pillar we explored the problem of conflict minerals"⁶²⁶.

Twenty-nine local NGOs are part of this network, founded in 2003. For their work of political pressure for EU regulation, they went to the OECD forum, wrote letters to MEPs and signed position statements together with other NGOs and INGOs.

X) Later we spoke with RIO, which is a network of organisations committed to the theme of conflict prevention and peace in the region of the great lakes, of religious orientation.

"We have existed since 2003. Our intervention is focused mainly in 4 areas: peace and education, conflict transformation, organisational development and good governance, with a focus on the mining sector. We take care of research on the mining sector, as well as the realisation of certain projects. In 2008 RIO did its first research on the situation of the miners. The objective was to understand the impact of mining activity on the life of rural communities in some pilot territories"⁶²⁷.

This organisation also includes lobbying and advocacy among its activities.

"We keep an advocacy approach. At the end of the research, we seek to capitalise by going to local, provincial and national leaders and decision-makers with suggestions and recommendations. We focused our researchers on the income of the artisanal mining sector"⁶²⁸.

"Usually when we finish a research project, we validate the results after having a discussion with all the authors. Second, at the provincial level, we validate the results with the mining administration, cooperatives, etc. We also invite COSOC and other organisations that are part of the mining sector. At a third level we validate the results at national level, after that it depends on the research. So our results are shared"⁶²⁹.

XI) The CDJP exists in the DRC as in many other countries around the world. In fact it is the direct emanation of the Second Vatican Council, which wants to promote social justice among nations through these commissions. The organisation is very large and well structured. It is in fact a top-

⁶²⁶ Interview with MUMBERE I. W., Responsible for human rights and governance of natural resources at CREF, 8/12/2017.

⁶²⁷ Interview with MINIEGO V., Officer at RIO, 15/12/2017.

⁶²⁸ Interview with DIMULE D., Researcher at RIO, 15/12/2017.

⁶²⁹ Interview with MINIEGO V. 15/12/2017.

down body, with offices in all the DRC provinces which also have numerous branches in the various cities and villages. Their ability to gather information is enormous, since the presence of their members is indeed widespread throughout the territory⁶³⁰. We interviewed Ms Florence Furaha who is manager of the natural resources observatory for the South Kivu.

"Since 2011 we have an observatory for the natural resources. We deal with issues related to the exploitation of natural resources and governance. The main objective is to reduce the contrast between the abundance of resources and poverty. And there a lot of questions are concentrated, such as respect for human rights, the level of community participation in resource management, transparency, etc."⁶³¹.

Being a rather large and branched organisation, the CDJP also deals with lobbying, advocacy, raising awareness of the communities living in the extraction areas, doing research, as well as complaints of situations of illegality and abuse.

XII) In conclusion, as regards the interviews conducted with Congolese organisations, we discussed with 'Justice pour tous'. This is a local organisation that advocates, especially to raise awareness of mining companies about the 'UN Norms on the Responsibilities of Corporations and Business with Human Rights and Rights of Indigenous People'. We interviewed Mr Kitungano who is also president of COSOC, a coalition of organisations that promote natural resources management that includes civil society and can avoid all conflicts.

"We have carried out several studies on artisanal mining. We also have several programs. The first focuses on human rights, which concerns women and children. The second program concerns natural resources and activities with the communities that live next to the mines. We have documented human rights abuses in this environment. We also participated in activities for the revision of the mining code, to improve weaknesses. We are also working on issues related to mining taxation, analysing the reports of companies and of the government on the payment of taxes. We also work with mining operators on the issue of mineral traceability and certification. We are trying to understand if there have been improvements since the traceability systems were put in place. For example, we know that there are many cases of fraud, smuggling and money laundering. There are buyers who disembark from neighbouring countries and who inject money that is not traced. We are also interested in the impact of mining on the environment. For example, we have identified companies that mine minerals in protected areas. Finally we

⁶³⁰ PRUNIER G. *The catholic church and the Kivu conflict*, Journal of religion in Africa, 2001, pp.139-162.

⁶³¹ Interview with FURAHA F. 11/12/2017.

participate each year in several international conferences"⁶³².

The interview with this organisation confirmed our hypothesis, which also emerged during other interviews. The issue concerns the funding of these NGOs working in the east of the DRC. In fact, as we hypothesised, many Congolese NGOs receive compensation for their studies, research and consultancy. They are also often invited by large NGOs or by IOs, for conflict minerals issues primarily the OECD, to participate in meetings in Europe. In this case, the IO is responsible for all the expenses of the invited NGO.

"To finance our missions abroad such as participation in OECD conferences, we sometimes receive invitations from the NGOs themselves, as is the case for Global Witness. They take care of the flight ticket or the costs on the spot. Other times we receive scholarships from IOs, like the OECD. Sometimes NGOs recommend us to the organiser of a conference, to pay for our participation. We also finance ourselves with research commissioned by international NGOs. These are joint studies. We do research for them, and we get paid. Officially we get paid as consultants. In this case, often, we cannot share the information"⁶³³.

In this paragraph we wanted to describe the work that the Congolese organisations that we interviewed. Let us now move on to the next paragraph in order to understand the work of their partners who carry out direct lobbying to the EU institutions.

3.1.2. INGOs

The second group of interviews will focus on organisations that have directly tried to influence the EU legislator, by working alongside it. In this part we will understand how, in general, these NGOs became specialised in lobbying. Obviously our focus is always the EU Conflict Minerals Regulation, which we will explore in greater detail in the following chapter of this thesis. Let us first start with one of the organisations that have worked the longest with the legislator and provided us with a large amount of information.

I) EurAc, the European Network for Central Africa, that includes a few dozen NGOs federated to inform, advocate and coordinate actions on issues like democracy, peace, justice and sustainable development. Its advocacy campaigns concern the DRC very often and their reports are addressed

⁶³² Interview with KITUNGANO R., Coordinator at Justice pour Tous, 15/12/2017.

⁶³³ *Ibidem*.

to governments, IOs, civil society and the media⁶³⁴. EurAc was created in 2003 by the merger of three organisations, one catholic, one protestant and one secular. EurAc draws its legitimacy from the group of NGOs that compose it and support it. These organisations that comprise it are in turn supported by many people. The network is made up of thirty-seven organisations based in European countries. In turn, not all the organisations that sustain EurAc are NGOs, in fact there are also research centres, foundations and federations. It is important to know that this type of conformation can give it added value in lobbying. In fact, thanks to its members, EurAc is able to exert pressure both at European level, from its headquarters, but also at local national-level through the offices of the organisations that make it up. In this way they have the capacity to spread the same discourse through many countries in the same moment. Indeed, the latter can put pressure on the countries of origin, from their offices to the respective national governments. Mr Cioffo said to us that:

"This is a practice [of lobbying] that we are doing in the MSs, through our members. We are in the process of building a position that our members will take to their competent authorities"⁶³⁵.

It can therefore be said that the support, even financial, that the members of EurAc give to the organisation for lobbying to EU institutions, demonstrate its credibility. And this is not the only evidence. Sure enough, practically all the actors we interviewed, both in the DRC and in Brussels, know and have worked with EurAc. Some more narrowly, others indirectly as we understand from the interviews of this thesis. It was one of the most active organisations, together with Global Witness, to carry out political pressure for the EU Regulation on Conflict Minerals. Indeed EurAc has worked directly with several MEPs, EC officials, members of the European Council and some of the governments that comprise it. And it's not over yet.

"Our work to influence policy makers is still underway. Even though the law was approved two years ago, there is a whole series of ancillary legislation that needs to be approved. Regarding the accompanying measures, most of the funds have been disbursed. They are planned until 2021, the date of implementation of the regulation. This fund has the function of promoting the transaction and preparing the sector and civil society"⁶³⁶.

Another reason that convinces us of the legitimacy of their action is that they have been working for many years on the Central African region and also that:

⁶³⁴ Cf. www.eurac-network.org

⁶³⁵ Interview with CIOFFO G. 27/2/2019.

⁶³⁶ *Ibidem*.

"in several documents from NGO members of our network, we can demonstrate that the issue of conflict minerals was already considered in 1996. It is really a historical subject for us. (...) Some founder members of EurAc were already working on conflict minerals, for example Christian Aid, Caritas France, Caritas Switzerland, CCFD"⁶³⁷.

To get a more complete overview of the work of this key actor, we asked to the interviewee the historical reasons why the organisation worked on conflict minerals. He gave us three essential arguments.

"A first reason is that after the genocide and afterwards with the war in the Congo, we realised that part of the security and violence issues that characterised the region were the result of conflicts linked to the trafficking of minerals. Second reason is the central role that minerals have for the African Great Lakes region. As we focus our work on this region, it is natural for us to be interested in minerals. At an economic level, this is the most important question, together with the land and other natural resources. A third reason why we chose to work on conflict minerals is because most of our members work in North and South Kivu, key regions for minerals"⁶³⁸.

Another important step that Mr Cioffo explained to us is how his organisation builds a position. As can be read from his interview: the NGO carries out a field mission in search of information; the NGO verifies the information and crossing the data it has collected; the NGO develops its own position, independently from the other partner organisations; the NGO compares its position with that of the partner organisations and, if necessary, develops a new position, in common with the partners.

"We do mainly missions in the field. There are also the missions made by the NGOs of our network, and after we exchange information. Generally we do not do a lot of data collection or interviews during our missions. On the issue of conflict minerals, we rely on the work of Global Witness. In our work, and not only on conflict minerals, we also confide on the data of our members, mainly CSOs. They are our primary source of information. In addition, we do a 'cross checking' work, because we talk with a lot of people, but they do not all have the same position. In addition, there exist political dynamics between the various actors of the civil society. So you have to be able to critically analyse the information that you receive. After having considered all points of view, we develop a position, at the secretariat level. It may be different from that of Congolese civil society, but not against it. In fact as we are a network of European associations, we are not interested in being against Congolese civil society, we consider it

⁶³⁷ *Ibidem.*

⁶³⁸ *Ibidem.*

counter productive. After analysing the information [from the field], we review the literature and then we build a position. This consists of a document which is sent to the members of EurAc. They are divided into three working groups. So I send the document to the relevant working group and we start a discussion. After several modifications we arrive at a common position. There is the possibility that not all members agree, but in any case, the minority accepts the official position"

"Sometimes to create a position is really difficult. Because we don't want to create alarms. Our position is to work with and for the Congolese population and the society in general. But our job is to find a common point between Congolese civil society and our European members"⁶³⁹.

Thanks to the interview with EurAc, we understood how this type of actor, which we consider very relevant, relates to the EU institutions. In this section it is clearly explained how there are two different ways:

"We work in two ways with the EC. Indirectly through the deputies of the EP. For example during the 'question time', during a debate on the argument, we contact the deputies, before they interact with the specific parliamentary committees, for example the INTA parliamentary Committee on International Trade and DEVE for development. Or assistants to deputies, before meetings of parliamentary committees, they ask us for clarification, some specific questions. We discuss these questions via email or face to face in their offices. In this way we, the NGOs, do not expose ourselves directly to the EC. In addition, it changes if we NGOs give a position to the EC, or if a deputy reads our position in parliament".

"The second way is to work directly with the EC. There are many people who work in this subject at the EC. We work with the DGs. In the case of the conflict minerals regulations with: DEVCO [International cooperation and development], Trade [Commerce], GROW [Internal Market, Industry, Entrepreneurship and Small and Medium-sized Enterprises (SMEs)]. Indeed there is the EEAS. Inside the EEAS there are regional offices, in Burundi, DRC, Rwanda, etc. You should know that the officials who work in these offices change often, so we work on the same file with several different people, who represent the same office or service"⁶⁴⁰.

II) After interviewing Mr Cioffo from EurAc, we also talked to Mr Triest, who has worked with both EurAc and CJP, who is the next organisation that has worked hard on these issues.

"I started working on the issue of conflict minerals in 2009. We started talking about possible European legislation when Section 1502 of the

⁶³⁹ *Ibidem*.

⁶⁴⁰ *Ibidem*.

Dodd-Frank Act was approved in the USA. Before that, NGOs worked on the Kimberley process which concerns diamonds. In 2010 we started to ask at the EC about the issue of human rights in supply chains"⁶⁴¹.

The CJP is a Belgian and Catholic NGO who has long worked on the issue of conflict minerals. This NGO is engaged in studies and research, as well as education activities and actions at a local level. The Commission is focused on the promotion of human rights, justice, sustainable development and peace, especially in Belgium, Africa and South America. This organisation boasts of an important well-structured network in Europe and internationally. The organisation at the international level is not hierarchical and the exchange of information of this structure is very fast and effective⁶⁴². For the conflict minerals issue, this organisation has worked closely with its Congolese homologous commission. One of our interviewees explains how the organisation is widely present in the area and the way in which it retrieves information.

"The CJP Belgique Francophone is a small organisation. It has privileged relations with Church organisations and especially the CJP DRC. You should know that in Central Africa, and especially in the DRC, the network of the Episcopal Church is of great importance. We observed the importance of this network during the political elections last December [2018]. They have contacts in all the villages, in all the cities we have organisations linked to CJP or the Episcopal Commission for Natural Resources (CERN), or with the bishops who deal with the issues. We went directly to the people on the ground and in each village there was someone from the church who came with us. This allowed us to have mutual trust because we were from the same organisation, we in Belgium, them in the DRC and with the bishop's agreement we could move quietly. So to get information from the field, we went on a mission because we had this reliable contact network. In order to complete the information, we used our contacts with Global Witness and Amnesty International, since we did not have research teams in place which we could pay."⁶⁴³.

"We have defended local partners and their demands. We coordinated the action of the NGOs and we also made direct advocacy in certain stages"⁶⁴⁴.

As we have seen, CJP has the advantage of being branched out and of being able to exploit its counterpart in the DRC for the collection of information. Another aspect that differentiates it from other lobbying organisations is its particular roots in Belgian society. In fact, they have all contacts with national and EU deputies and have often maintained relationships with them over many years. Although they have inferior means if compared to large organisations such as Amnesty

⁶⁴¹ Interview with TRIEST F., Researcher and Advocacy Officer on natural resources at CJP and EurAc, 6/3/2019.

⁶⁴² Cf. www.justicepaix.be

⁶⁴³ Interview with FICHER S., Advocacy Officer for CJP, 28/2/2019.

⁶⁴⁴ Interview with TRIEST F. 6/3/2019.

International or Global Witness, they have favoured the latter with their precious contacts. The large NGOs have instead played a role of research, legal and technical analysis of the law in more depth. In this way, large and small lobby organisations compensated each other and worked together.

"We leaned towards political work, because we had the right contacts (...). When it comes to the analysis of legal texts, it was rather the role of Amnesty and Global Witness. Our strength was then to transform legal discourse into political demands for the Belgian reality. In addition Amnesty and Global Witness were involved in lobbying in each European country, because each government and each parliamentarian from the country had to be informed and be able to adhere to our position. But these two large NGOs did not have the human network and direct contact with parliamentarians. We had the role of promoting contact with most of the Belgian MEPs. [For example, in the case of EU Conflict Minerals Regulation] we worked with Maria Arena, Claude Rolin, Louis Michel, the largest Belgian parliamentarians and from each group. We have known these MEPs for long time, so from the cards to play, the aces for us were simple. In addition we had easy access to federal parliamentarians"⁶⁴⁵.

We want to underline an aspect which is shared by the work of both EurAc and CJP, namely that this is one of their methods of political pressure towards institutions. Having many connections with NGOs from many countries, they are used to inviting actors who are interested in certain issues, to the legislator and to make them speak as testimonials. This method allows the legislator to approach an expert of a certain problem.

"Normally we are used to bringing a partner from the field, a Congolese partner, as an expression of the request of local civil society. We then organise advocacy meetings with this partner, for two or three days, with representatives of the EU, or of Belgium. This is a method that CJP and EurAc have always adopted: bridging the gap between decision-makers and partners from the south, from the field. After that, there are rather technical meetings where we analyse the different positions or proposals to then defend our position with the legislator. It is a completely transparent method, given that we are accredited in institutions"⁶⁴⁶.

In order to bridging the gap between decision-makers and 'partners from the south', NGOs are also used to invite institutional actors on the field.

"We organised a field mission in 2013 to the DRC for MEPs with the CJP and Terre Solidaire [member of EurAc]. We invited MEPs to visit our partners of civil society, to visit artisanal mines, cooperatives, merchants,

⁶⁴⁵ Interview with FICHER S. 28/2/2019.

⁶⁴⁶ Interview with TRIEST F. 6/3/2019.

etc. We met the mine thematic group, with Eric Kagemba, from the OGP and another fifteen organisations which are members of this platform. As parliamentarians we had Judith Sargentini who later played an important role in parliament. We were able to feed her reflections and direct knowledge from the field"⁶⁴⁷.

III) The European Institutions office of Amnesty International lobbies to ensure human rights protection in the EU policies. The action of the office is directed to the different bodies of power of the European institutions and also includes the representatives of the various MSs. The office provides information and recommendations to the members of the institutions by organising round tables, meetings, conferences, awareness campaigns and letters to representatives⁶⁴⁸. Amnesty has over seven million supporters in the world, which gives it considerable power⁶⁴⁹. They worked in advocacy for the conflict minerals issue from their office in Brussels. Together with Global Witness, Amnesty has coordinated the civil society campaign which has involved more than sixty organisations. After learning that NGOs sometimes work in groups and make alliances on certain specific actions, we asked Amnesty how they go about organising their work that they share in common with many organisations.

"How exactly do sixty organisations work together? Normally an organisation takes the initiative to propose an action or an activity to others. An initial text that summarises a series of initiatives or takes a position on a given topic is proposed. Subsequently, this draft text is shared with all others organisations, which comment, modify and improve it. At this stage there are many exchanges of ideas and discussions between the various members, since each one must be able to meet their expectations. When the common draft is ready, it is adopted by all partners. When necessary, funds are mobilised to fulfil the project. Normally one or two project leader organisations are chosen, who are concerned with maintaining relationships with all others and reporting their activities"⁶⁵⁰.

Another aspect that has been explained to us by Amnesty, concerns their way of applying pressure on political decision makers.

"There are several ways to directly influence decision makers. In the case of the EU, we are addressing the members of the Council, the Commission and the Parliament. It depends on who plays a crucial role in making a

⁶⁴⁷ *Ibidem*.

⁶⁴⁸ Cf. www.amnesty.eu.

⁶⁴⁹ CLARK A. M. 2010.

⁶⁵⁰ Interview with MEYER N., Senior Executive Officer, Economic, Social and Cultural Rights at Amnesty International European Institutions Office, 10/10/2017.

decision. We do not go, for example, to every MEP, but we focus our attention on those who are most involved in certain decisions because they work directly on it. Generally, for speaking with decision-makers, we write letters, use social networks or by organising meetings. Additionally, another strategy is to address the general public. Practically, we try to appear in newspaper articles, on television, to make some issues known to all citizens. We also work by presenting petitions, which we present to the relevant decision-makers. All of these actions have been made during the EU's negotiation on conflict minerals initiative"⁶⁵¹.

Many and various collaborations are undertaken by Amnesty International with other organisations around the world. As we have already seen, in the case of the EU Conflict Minerals Regulation, the European Institutions Office of this INGO has dealt a lot with the technical-legal aspects. In the DRC, however, other branches of Amnesty have a network of NGOs with which it cooperates, in particular for the monitoring of human rights violations.

"We work with Amnesty International Netherlands, especially for monitoring human rights violations. They are also our financial partner. They give us funds to train monitors. We meet them here from time to time"⁶⁵².

IV) Among the NGOs that have had perhaps the most collaborations, we find Global Witness. As explained above, we were unable to directly interview this organisation. However, we collected numerous interviews in which others told us about the activities of this INGO. Thanks to this, we have been able to reconstruct a good part of their lobbying and advocacy action. As we will see, this NGO has lobbied the institutions also through the informal CORE group. We understood how Global Witness has done a lot of their research in the field, meeting practically all the actors that we have also met. We have had various different positions on this type of collaboration, which was absolutely informal. Here we report the most relevant ones.

"In the case of the lobbying on the EU regulation, we worked with Global Witness. Practically we received them here at the office: they were looking for information on the issue of conflict minerals. With our information, they then prepared their material to do their lobbying work. Furthermore, we have received a lot of information from this organisation on the state of the legislative process"⁶⁵³.

"We collaborate with Global Witness London. Often there is the belief

⁶⁵¹ *Ibidem*.

⁶⁵² Interview with MURAIRI J. 8/12/2017.

⁶⁵³ Interview with MUMBERE I. W. 8/12/2017.

that INGOs only carry money to small NGOs, but we also receive practical help for our advocacy campaigns. There is a real collaboration, an exchange of ideas and the construction of strategies. Thanks to the pressure that we can make through Global Witness, we feel that the actors take ownership of the problem, they listen to us more seriously"⁶⁵⁴.

"We are partners of Global Witness, through which we have had intense exchanges of information. Thanks to their means, they can do research in places where we cannot reach. From time to time, we receive very specific questions from Global Witness, which they ask us to answer. They ask us to provide them with specific items. In certain periods we have contact every week. Technically we work by exchanging emails or we either receive them here or we meet them abroad, especially in Rwanda, if they have problems with their visas. Sometimes the authorities block their access in the country because of their publications"⁶⁵⁵.

Another important activity carried out by Global Witness thanks to the collaboration of Eastern DRC's NGOs, was to have numerous press releases and position statements signed which were then forwarded to the legislator.

"For the EU regulation, we signed a position statement which was offered to us by Global Witness. Pressure has mounted on the EU to force the industry to make arrangements and commit to controlling the supply chain"⁶⁵⁶.

INGOs such as Global Witness, who have worked extensively on the field, have sometimes helped to protect the work of local NGOs and have contributed to the dissemination of sensitive information⁶⁵⁷.

"Normally when we have particularly sensitive information, we share it with INGOs, because we have no security measures to protect us here. For example in 2015, there was information that came from the territory of Shabunda. In this area, there were Chinese people working illegally in an artisanal mine and financing armed groups. We have reported the matter to INGOs, including Global Witness, which has released a report on the matter"⁶⁵⁸. We are the information providers"⁶⁵⁹.

⁶⁵⁴ Interview with BULONGO S. 5/12/2017.

⁶⁵⁵ Interview with KAMATE G. K. 8/12/2017.

⁶⁵⁶ Interview with MUHIMA A. S., Lawyer and Executive Director at *Observatoire de la société civile Congolaise pour les minerais de paix*, 7/12/2017.

⁶⁵⁷ For example: GLOBAL WITNESS *L'heure de creuser plus profondément. Les entreprises qui exportent et commercialisent des minerais provenant de la région des Grands Lacs africains ont opéré quelques progrès en matière d'approvisionnement responsable, mais elles doivent fournir davantage d'efforts*, Août 2017.

⁶⁵⁸ GLOBAL WITNESS *La rivière d'or. Comment l'État s'est retrouvé perdant lors de la ruée vers l'or dans l'est du Congo, tandis que des groupes armés, une société minière étrangère et les autorités provinciales ont empêché des millions*, Juillet 2016.

⁶⁵⁹ Interview with KITUNGANO R. 15/12/2017.

"When the issue of human rights violations related to mining began to come to the forefront, we were afraid for our safety. As the violations sometimes even concerned the authorities or the military, we could not go out publicly with reports, press releases, etc. So it was also a reason to collaborate with organisations that were not based here, not locally, but who could equally have major visibility and influence here"⁶⁶⁰.

After understanding the work done by the NGOs we interviewed, we now go to introduce the other actors with whom we have dealt. These were interviewed to get a more complete idea of how NGOs operate in order to influence a law and to gauge their level of legitimacy.

3.1.3. Other actors

I) In order to have a more complete understanding of eastern RDC and its complexities, we interviewed Mr Franco Bordignon. He is a xaverian missionary of Italian origin living in Kivu for over fifty years. He is an expert on the history of the region, especially of conflicts related to natural resources. He has collaborated with several newspapers and television stations from various countries, as well as being a point of information collection for many people living in the region. Thanks to his precious testimony, we have been able to reconstruct the reasons why the wars for resources have been fuelled in the east of the DRC. He made us reflect on the various power relations and understand the impact of mining on the geopolitical balance of the country.

II) Another interview we organised in the DRC was with CPS, a governmental organisation whose purpose is to clean up the mining sector, prevent fraud, smuggling and manage the basket fund for the territory. The organisation is a direct product of local institutions. Indeed the institute was created by an order of the governor of South Kivu in 2010. The provincial minister of mines is the president of the CPS. The CPS include: members of the provincial government; five members of civil society; economic operators including traders, cooperatives and companies working with minerals. Financial partners include: GIZ, BGR, IOM, ITRI, BSP⁶⁶¹. They work together to ameliorate the mineral sector⁶⁶².

"Each month we have a meeting to discuss all questions concerning the mines and then we develop recommendations. We have technical coordination and decisions that are made on a tripartite basis. No activity

⁶⁶⁰ Interview with MUMBERE I. W. 8/12/2017.

⁶⁶¹ Institute for Geosciences and Natural Resources (BGR); International Organisation for Migration (IOM); The International Tin Research Institute (ITRI); Biodiversity Support Program (BSP).

⁶⁶² Interview with BULONGO S. 5/12/2017.

can be done without the presence of members of civil society. We also manage the community development fund which is a basket fund that has existed since 2013. This fund comes from companies to be able to make projects and fight against poverty in the areas of exploitation of minerals. The amounts for the fund are taken as a percentage per tonne of material exported, coltan, cassiterite and gold"⁶⁶³.

When they received us, we asked Mr Bienvenue Mapendo for some information about their position and influence on legislation, in particular the EU regulation.

III) To try to understand the legitimacy and the influence of NGOs on the law-making process, we went to the actors of EU institutions. We interviewed some MEPs, especially those most active in the process of building and writing the law. Among these there is Ms Judith Sargentini, who made the first pressures towards her deputies, colleagues and towards the EC, so that the EU could start the law initiative. From her interview we understood how her previous experience and personal sensitivity have stimulated her personal commitment within the EP.

IV) MEP Ms Cécile Kashetu Kyenge, a native of the DRC and an expert on relations between the EU and the DRC, spoke of her relationship with CSOs and NGOs.

"I have not worked personally on the issue of conflict minerals, but I have always followed it very closely since I have been a MEP. Let's say that before I followed the issue as an activist, now I follow it as a politician. (...) About five years ago we started talking about the issue of conflict minerals in Parma, so it's a topic that I knew. (...) Furthermore, I am sensitive in general to human rights, it is part of my values. (...) I was also the promoter of a campaign on cell phones that asked to stop sending sms for a week. Then came the moment when the EP found itself tackling the issue. This further increased my personal knowledge"⁶⁶⁴.

Despite not having worked directly on the EU regulation, Ms Kyenge knows the Congolese context well and she has worked to make its colleagues aware of the problems related to the Great Lakes region.

"At the institutional level, for the issue of conflict minerals, I went on a mission with my parliamentary group to Bukavu, Goma and Kinshasa. This was within the framework of my position as Vice-President of the ACP-EU Assembly. The aim was both to raise awareness among the parliamentarians present in our group, and to meet representatives of the

⁶⁶³ Interview with MAPENDO B., Program Manager at CPS, 12/12/2017.

⁶⁶⁴ Interview with KYENGE C. K., MEP, Group of the Progressive Alliance of Socialists and Democrats, 26/6/2015.

Congolese government at local and national level, to find out their opinion on this issue. We met with various ministers, representatives of civil society, private companies, so we compared ourselves with all the categories interested in the matter"⁶⁶⁵.

V) We then interviewed at length Ms Marta Ruiz Carnes, assistant to MEP Ms Maria Arena, a member of the INTA committee of the EP. She has worked a lot on this issue on behalf of the Socialist and Democrats parliamentary group. Ms Maria Arena was a reference for all the actors, first of all her colleagues, but also for EC officials, for the INGOs, but also the MNCs and the lobbies that represent the industries. Many NGOs interviewed in the DRC also told us they knew and worked with Ms Maria Arena. In the next interview, the legitimacy of NGOs in relation to MEP is highlighted, since it is clear that NGOs are prepared on technical issues to the point of instructing MEPs.

"We have had a lot of discussions with civil society. (...) We have worked a lot with Amnesty International, Global Witness especially on a technical level. Their expertise on the themes of natural resources, corruption etc. was very helpful to us. In fact, they also have a deep knowledge of the field, of the DRC and a lot of contacts with local actors. At the Belgian and political level we worked rather with CJP, EurAc, CNCD-11.11.11, which are actors with whom we often work. The aim of these actors is to work for the general interest and not on particular interests, as is the case for industrial lobbying groups. Clearly we also met with industry representatives. We wanted to listen to their positions and their arguments because we keep an open mind. But we very quickly understood that, for this regulation but also more generally, despite the fact that they present themselves as the defenders of all companies, we realised that they defend mainly the interests of big companies. I refer for example to Business Europe, which occupies the corridors of the EP where is well-known and I imagine in the EC too, who work a bit on all the files. They always have a position paper"⁶⁶⁶.

The interview confirmed that MEPs have worked extensively with NGOs, meeting them often, trusting their advice and going with them on the field. MEPs also recognise the important role played by NGOs in mobilising civil society and raising awareness among the institutions.

"I think NGOs have played a very important role in this political battle. They provided us with a large quantity of technical elements which enabled us to amend and master the various passages of the regulation. The industries are also very prepared at the technical level, so you have to

⁶⁶⁵ *Ibidem*.

⁶⁶⁶ Interview with RUIZ CARNEZ M., Advisor to MEP Maria Arena on International trade and ACP, Brussels, 25/2/2019.

know how to manage their discourse. But the NGOs allowed us to work on the regulation at the technical level and not only at the political level. At an external level, the work of NGOs has also been very important for their awareness campaigns towards public opinion. I also consider important the work of Catholic Christian NGOs, who have been able to mobilise bishops and other actors who have had an influence on MEPs who have this type of sensitivity. (...) Thanks to the work of NGOs, we certainly had an influence during the process of approving the regulation"⁶⁶⁷.

VI) To better understand the balance of various powers at the EU level, we were able to talk to some EC officials, who preferred to remain anonymous. They explained some of the background negotiations that characterised the construction of the law. We asked them which the actors they were dealing with during the regulation approval process. We came to understand how the EC relates to an important number of actors, public and private, who represent various and often opposing interests.

VII) Finally, we also had the opportunity to interview the manager of public policy in Europe of a large multinational company. He was keen to express his company's position regarding the regulation and the work of other actors, like NGOs:

"Our aim was to support the European regulation so that it can work in conflict regions".

"We all have the same goal: we want to do something. Especially for communities in the regions concerned. But there are different ways to get there"⁶⁶⁸.

Among other things, it is interesting to note how this position fits almost perfectly with that of some NGOs:

"in fact there was not really anyone against the regulation, everyone was in favour. No one is against human rights. The tipping point was rather: do we want a settlement or do we let the business do what it wants?"⁶⁶⁹

We must specify that this thesis is not concerned in particular with the influence that the industrial sector has had on the conflict minerals law. We have, however, considered it interesting to

⁶⁶⁷ *Ibidem*.

⁶⁶⁸ Interview with LAGEARD J., Public Policy Senior Manager in Europe, Middle East and Africa at Intel Corporation, Member of DigitalEurope and American Chamber Congress to the EU, 25/2/2019.

⁶⁶⁹ Interview with TRIEST F. 6/3/2019.

interview at least one representative of the sector. Mr Lageard explained to us, in particular, some specific partnerships which include MNCs, governments and NGOs, as we will see later. This has helped us to more accurately frame lobbying, the legal tools that the EU puts at their disposal to influence the legislator and also some informal mechanisms that are commonly used.

3.2. NGOs partnerships in eastern DRC

Congolese civil society organisations are very numerous, including those dealing with natural resources. However, in reality the provinces of North and South Kivu are closely connected. In fact, also thanks to our experience with interviews, we understood that the main actors often know each other: they encounter each other at conferences, at meetings and sometimes they shared political battles, studies or work experiences. At the beginning of our field research, we did not have many contacts for our interviews. As we have clarified previously, we had established an official collaboration with the CEGEMI, a research centre of the UCB. Thanks to them, we had a small group of initial contacts for the interviews. Later, in interview after interview, we received new contacts. The actors directed us to new organisations, providing us with addresses and telephone numbers. This has shown that organisations know each other. Considering also the context of insecurity in the east of the DRC, they trust each other, since they easily provided us with contacts of other organisations. We also discovered later that sometimes they work together. In fact there are NGOs that collaborate closely with each other, or others that are federated together in a series of networks and common tables, where the exchange of information takes place in a more official and constant way.

We have subsequently tried to reconstruct the main networks through which these NGOs operate and collaborate on their territory. We would like to specify once again that not all the organisations we have met have a the legal status of an NGO. We call them NGOs to simplify, since the majority are actually that, however, as we have seen previously, there are also other organisations, for example, linked to Churches, semi-governmental organisations, commissions, federations, etc. Later in this research, we will explore how these actors collaborate with their peers internationally. In particular, we will focus on how these networks came together to influence the EU Conflict Minerals Regulation.

We are therefore going to list below the main groups of CSOs that we have discovered who exist and operate in the east of the DRC.

I) GTT Mines, *Groupe thématique mines*: is a CSO group of the city of Bukavu, South Kivu province, in the DRC. This group includes Max Impact, CEGEMI, CENADEP, OGP, Cresa ASBL, BEST, CDJP, Justice Pour Tous, APRODEPED, CRONGD, RIO. Some delegates of the GTT Mines, participate in the meetings of the CPS committee (Provincial committee for monitoring mining activities).

"We have a thematic mine working group which brings together all the local players working on the issue of minerals and mining governance. Through this group we have worked with INGOs"⁶⁷⁰.

II) CERN, *Commission Episcopale pour les Ressources Naturelles*: was founded in 2007 following the outcome of CENCO, *Conférence Épiscopale Nationale du Congo*, which focuses on the economic and social situation of the DRC, in particular, from the observation of the paradox of the abundance of natural resources in the DRC and the extreme poverty of the population. CERN communicates closely with natural resources observatories, who are established in all dioceses of the country. The main objectives of the natural resources observatories are to follow and document all issues relating to the exploitation of natural resources. Thanks to the data that CERN receives from natural resources observatories, alternative strategies and positions are developed to promote the balanced management of resources, which takes into account human rights, environmental balances and respect for human dignity. The main objectives of the observers are to follow and document all issues relating to the exploitation of natural resources. Thanks to the data that CERN receives from observers, alternative strategies and positions are developed to promote balanced management of resources, which takes into account human rights, environmental balances and respect for human dignity. CERN acts on policy makers through lobbying and through local populations to train them in responsible resource management. CERN relates to all the actors of civil, local, national, regional and international society who pursue similar objectives⁶⁷¹. As we have seen previously, we have interviewed the Bukavu observatory, which collaborates with other observers in the region and is in close contact with CERN nationally. This has worked extensively to put political pressure on the EU institutions.

"CERN has done a lot of work in Europe to support the legislation. As an observatory on natural resources, we have enriched the CERN database. CERN, on the basis of these data, with the data of all the other observatories in the country, has built up a position for advocacy at

⁶⁷⁰ Interview with KITUNGANO R. 15/12/2017.

⁶⁷¹ Cf. www.cern-cenco.net.

national and international level"⁶⁷².

III) COSOC: is a non-profit network of CSOs across the Great Lakes region. He declares himself independent, even from political and religious organisations. Among its main objectives are: the fight against illegal exploitation of resources; the promotion of a natural resources conflict-free trade; the inclusion of local communities in the exploitation of resources; the promotion of dialogue between all stakeholders; the promotion of a fair cross-border trade, promoting solidarity, conviviality and good neighbourly relations. Among its activities it promotes advocacy, raising awareness of local communities, capacity building and monitoring. In particular one of the major goals is the "surveillance, qualification and validation of mining sites. (...) The validation and qualification of mine sites are based upon the following 5 key aspects: conflict; working conditions; environment; transparency; community development"⁶⁷³. ICGLR, the governmental organisation that we will analyse later in this thesis, finances it. Among the organisations we have interviewed, COSOC includes: Justice Pour Tous, Max Impact and RIO.

ICGLR and COSOC are among the coalitions that have been most criticised during our interviews. According to some interviewees, these networks would only benefit the neighbouring countries, Rwanda, Burundi and Uganda. Thanks to this type of coalition, the fight against the smuggling of minerals would be justified, when in reality there would be no real political will to do so.

"COSOC is a coalition of CSOs from the Great Lakes region that includes the organisation of which I am the founder and director. They are a partner of the ICGLR, which also gives it funding. In my opinion, it is a strategy of corruption of Congolese civil society in the face of the practices of Uganda and Rwanda looting natural resources. The ICGLR itself promotes these practices. And I find it impossible that the Rwandan and Ugandan organisations of the COSOC denounce illegal trafficking. Their members will be immediately arrested and the organisations closed. Rwanda was for ten years the best exporter of coltan in Africa. And they do not want to lose this positioning. They even said that they have mines in Kigali, but they are lies"⁶⁷⁴.

The reality observed and studied justifies these criticisms; given that the smuggling has continued for decades undisturbed and few improvements are visible that challenge this perspective.

⁶⁷² Interview with FURAHA F. 11/12/2017.

⁶⁷³ Cf. www.cosoc-gl.org.

⁶⁷⁴ ANONYMOUS interview with a member of an NGO in Goma, DRC, 7/12/2017.

3.2.1. Other NGO Partnerships

We now find out which are the main international partnerships between organisations. First of all, we must specify that often these are not official partnerships, but rather just coalitions which have been developed for specific lobbying activities. In particular, we have obtained and understood these links between organisations thanks to our interviews, focused on the EU regulation. There will likely be many other ways of collaborating and forging partnerships and ties between many organisations. However, our focus in this next paragraph is to try to highlight which organisations have collaborated in order to lobby for the EU regulation. In this way we will also try to show the most active, most credible and most effective NGO partnerships.

I) We start by describing an informal partnership that has worked extensively alongside the European legislator. It is called CORE group and is made up of the largest NGOs based in Brussels. It includes Global Witness, Amnesty International, German Watch, EurAc. The CORE group was formed exclusively to lobby the EU Conflict Minerals Regulation. They studied the law proposal, and devised the actions to influence the legislator.

"When [commissioner] De Gucht launched the rather disappointing draft initiative, we organised ourselves into a coalition with members of EurAc, Global Witness, Amnesty and others. The coalition was not formal, but we put our energies together to demand an ambitious regulation. This process lasted until the end of the trilogue and the final adoption of the regulation by the Council"⁶⁷⁵.

The CORE group worked in cooperation with the members of the EP who followed the legislative process the most, especially with Ms Maria Arena and Ms Judith Sargentini⁶⁷⁶. In addition, various members of the CORE GROUP worked with some EC agencies, for example with the EEAS, as we understood from this interview.

"There were the CJP and Global Witness who participated in the first meetings organised by the EEAS. These were reflection seminars on the legislative initiative. Between the participants there were also representatives of the industry including Business Europe and others, who were against a legislative initiative"⁶⁷⁷.

⁶⁷⁵ Interview with TRIEST F. 6/3/2019.

⁶⁷⁶ Interview with CIOFFO G. 27/2/2019;
interview with SARGENTINI J., MEP, Greens–European Free Alliance, Rapporteur on conflict minerals, 7/2/2019;
interview with RUIZ CARNEZ M. 25/2/2019.

⁶⁷⁷ Interview with TRIEST F. 6/3/2019.

On a practical level, the CORE group came together in meetings, writing emails and phoning via Skype or WhatsApp. The tasks were divided in various ways and according to their strengths. Our research shows that in particular, Global Witness carried out much of the field research, Amnesty International studied the legal aspects of the Regulation, while EurAc organised field visits for MEPs and invited various influential personalities to speak at the Brussels institutions⁶⁷⁸.

II) The CJP has worked a lot at the Belgian level to put pressure on the national parliamentarians and the Belgian MEPs. This work took place through the *Réseau belge ressources naturelles* (RBRN), which promotes the improvement of resource management in Africa, Latin America and Asia. The network's objectives are: the exchange of information between different actors; the dissemination of information, the strengthening of advocacy actions, awareness raising, the conception of common projects, the projection of a sustainable management of resources, promotion respectful of the environment and free from conflicts. More than one hundred organisations from all over the world are part of the network⁶⁷⁹.

"With the RBRN we set up public awareness projects to popularise these questions, even though we knew that they were complicated. We wrote articles for our associates. We organised an exhibition at *Namur Salon Valériane*. Our belief is that only with public awareness will policies change. We also know that the people who are interested in these issues are not at all the majority, but may be people already active in social movements"⁶⁸⁰.

The RBRN is able to play an important role in putting pressure on Belgian parliamentarians, in the federal parliament and in the EP, as it enjoys credibility. In this way they could then put pressure on the EU Council. This next interview demonstrates how CJP worked through the RBRN network at national level, in Belgium, but also in the EU institutions, where, however, it was less influential.

"We had easy access to federal parliamentarians, whom we contacted to propose a national resolution in favour of an ambitious regulation at EU level. We worked with CDH e PS [Belgian political parties] on the resolution, but ultimately the approved text was quite weak. This resolution was transmitted to the Ministry of Foreign Affairs who then sent the file to the EU Council. To summarise, we worked on four levels: in the EP, with the federal parliament, with Belgian Foreign Affairs of the federal government - the Didier Reynders cabinet - and with the EC - De

⁶⁷⁸ Interview with FICHER S. 28/2/2019;
interview with CIOFFO G. 27/2/2019.

⁶⁷⁹ Cf. Réseau Belge des Ressources Naturelles, www.cncd.be/+-Reseau-belge-des-ressources-+.

⁶⁸⁰ Interview with FICHER S. 28/2/2019.

Gucht and Malmström cabinet. Clearly we were more efficient, because of our legitimacy, at federal level and on Belgian MEPs and less at the EC, where we often let the big NGOs speak"⁶⁸¹.

Another lobby tool for RBRN members was to invite Congolese bishops to express their position to the MEPs.

"We organised several visits in Brussels of the Congolese Catholic bishops to facilitate meetings with MEPs. We used them for their knowledge of the field. They took part in some meetings at the EP, at the Belgian Ministry of Foreign Affairs and even at the Dutch Presidency of the Council of the EU"⁶⁸².

Finally, some member organisations of the RBRN promoted an important lobbying action towards the EU institutions: the 2015 bishops' declaration. This letter called for ambitious regulation that could put an end to the terrible suffering of the Congolese people. We highlight this specific action not only because it has become well-known but because of its salience. We have found the letter of bishops on many websites and many NGOs, even in the DRC, have told us about this lobbying action. This was an atypical lobbying tool, particularly original, which has attracted a lot of consideration.

"A final player is CIDSE [International Cooperation for Development and Solidarity], with whom we have worked a lot. With them we built the declaration of bishops in 2015, signed by a hundred bishops. This made it easier for us to speak to the most conservative sectors in the EP. And even the socialists of the EP were enthusiastic about this position. This has been a powerful lobbying tool. With that we had access to deputies from the EPP group, like Manfred Weber, who was vice president of the EP"⁶⁸³.

III) At the end of this paragraph we would like to highlight a place where numerous partnerships have developed and deepened: the OECD. In fact, this IO organises the Forum on Responsible Mineral Supply Chains every year. This event is a crucially important reference point for all operators in the sector. It is not a partnership but rather a place where numerous meetings happen, where the actors know each other, compare, update or build strategies and develop new tools for lobbying. Several actors told us about this OECD forum, considered an unmissable appointment for many of them.

⁶⁸¹ *Ibidem.*

⁶⁸² *Ibidem.*

⁶⁸³ *Ibidem.*

"We went to the OECD forum and we met the Minister of Mines. We advocated on this occasion to promote dialogue between local communities and businesses"⁶⁸⁴.

"We regularly make trips to Paris to make the voice of people heard by world organisations"⁶⁸⁵.

We also participated in the 13th edition from 23 to 26 April 2019. In this context, we met several members of the NGOs that we had already interviewed. So we were able to exchange ideas and updates on mineral issues. We also had the opportunity to meet some industry experts who work in MNCs. Finally, we also interviewed some EC officials who participated as speakers at some conferences.

There is no shortage of criticism regarding this type of conference. A major criticism has been the disproportion of power dynamics in relationships between some actors, for example mineral focused MNCs, compared to some small NGOs. Some actors, not seeing any change of the situation of extreme exploitation in their country, wonder about the usefulness of this type of conference.

"We, the civil society NGOs of South Kivu, have participated at least ten times in the OECD conferences. We wonder what the impact of these conferences is after ten years. At some point we ask to ourselves: what are the advances? At this meeting there are strong contradictions between government and civil society, so we ponder on how to harmonise these contradictions"⁶⁸⁶.

We have understood in these last two paragraphs the way in which NGOs work together, formally or informally. Lobbying can be complemented and supported by local or global partnerships. Of course, working with so many heterogeneous groups is not always easy. In fact, as we will see in the next section, some specific criticisms are made of the work of some NGOs.

3.2.2. Criticisms of NGO Partnerships

In the literature concerning NGOs and their way of working, we can find many criticisms. However, we will not address this in the thesis. We limit ourselves in this next paragraph to report some criticisms that have been made during our interviews, which is strictly related to our case study. Despite good intentions, some criticisms have emerged of Global Witness which was perhaps

⁶⁸⁴ Interview with KAMATE G. K. 8/12/2017.

⁶⁸⁵ Interview with MURAIRI J. 8/12/2017.

⁶⁸⁶ Interview with KITUNGANO R. 15/12/2017.

the NGO most involved in researching information on the ground in order to influence the EU regulation. We believe it is therefore quite normal for them to have received criticism. They worked with many NGOs, probably with relatively short deadlines. The criticisms mainly concern their ways of working, which are not always agreed by their research partners. There was also probably misunderstandings. For example, NGOs from the east of the DRC complained that they had not been sufficiently involved in the work done by Global Witness.

"Sometimes they asked us to participate in certain actions, but they were already decided, they only wanted the signature. It is not a good way of doing things. But we still signed a lot of documents from civil society. They are official positions signed by several organisations. These documents are then sent to the policy maker. In fact we shared the idea, the content of the action but we did not really participate in the construction of the position. It was an indirect collaboration"⁶⁸⁷.

Other organisations have accused INGOs of appropriating their work. This could have happened after some NGOs shared the results or part of a research work, informally. Other NGOs could therefore have used it, without having asked for further permits. From here some complaints arise.

"We are a little disappointed because the surveys and the field research that we did and that we shared with them, were not presented or credited as our work. They took our work and published it without asking for our permission. They did not mention our name, even though we were the authors of these reports. They presented the results of our work with their names. We have not been able to benefit of any result, even an economic one, from our work. From this, we want to work independently in our research, to avoid our publications being sold or vilified by other organisations"⁶⁸⁸.

Other criticisms have questioned the results of the research and the information presented in the INGOs publications.

"We hear about international organisations like Global Witness on the radio when they publish their reports. We have noticed a lot of contradictions in some reports; the information is not precise enough"⁶⁸⁹.

In this sense, we would like to reiterate that NGO publications do not have a scientific character, are not necessarily neutral or totally free of third party interests. In addition, like many publications,

⁶⁸⁷ Interview with USSENI J. 7/12/2017.

⁶⁸⁸ Interview with MUHIMA A. S. 7/12/2017.

⁶⁸⁹ *Ibidem*..

they can sometimes contain errors.

3.3. First initiatives

In these first two paragraphs of the chapter, we introduced the major organisations at the heart of this study. As we have seen, some of them work locally in the east of the DRC while others have a more international character. Working in various methods, through partnerships or networks or alone, they have sought to influence the European legislator throughout the process of approving the EU Conflict Minerals Regulation. The work of these organisations was not limited only to the EU. Various initiatives had previously been undertaken in other countries, thanks partly to the political lobbying work of the NGOs. The work of these organisations has been carried out in response to the series of violent and massive human rights violations that have taken place in the DRC. One of the first concerning the DRC dates back to 2001, an initiative aimed at protecting the flora and fauna, especially gorillas and Okapi wildlife reserve, from the threat of war. This first attempt was made to protect the Kahuzi-Biega and Virunga National Parks in South Kivu from illegal coltan mines⁶⁹⁰. Other minor initiatives, including research, have been sponsored by the Belgian and German governments. The purpose of these research project was to determine whether it was possible to chemically track raw materials based on their characteristics and provenance⁶⁹¹. A more substantial initiative is proposed by the UN Secretariat and the African Union (AU). It aims to end the conflicts that started with the Rwandan war in 1994. The exodus of one million refugees and the proliferation of armed groups had a huge impact on regional security and it was time for a political response to an unprecedented crisis.

A first proposal is included in two UN resolutions of the year 2000 which require, inter alia: the cessation of all forms of hostility and violence to all parties; respect for the territorial integrity and political independence of states; respect for the DRC sovereignty over these natural resources and the importance of combating illegal logging⁶⁹². The UNSC reaffirms the importance of organising an international conference on peace, security, democracy and development in the Great Lakes region, involving all the governments of the region and all other concerned parties⁶⁹³.

⁶⁹⁰ UNESCO, World Heritage Committee, *Report of the rapporteur*, WHC-2001/CONF.205/10, Paris, 2001, pp.14-15.

⁶⁹¹ CUVALIER J. G. R., VAN BOCKSTAEL S., VLASSENROOT K., WAKENGE C. I. 2014, p.3.

⁶⁹² UNSC, S/RES/1304, adopted on 16/6/2000.

⁶⁹³ UNSC, S/RES/1291, adopted on 24/2/2000, para.18.

3.3.1. The International Conference on the Great Lakes Region (ICGLR)

Finally the conference held in Nairobi, Kenya, in the same year: the main actors are the states of the region that are directly or indirectly concerned by the conflicts: Angola, Burundi, the Central African Republic, Kenya, Rwanda, Sudan, Tanzania, the Republic of Congo, the DRC, the Republic of South Sudan, Uganda and Zambia. These states are the same that make up the ICGLR subregional organisation, which takes shape in 2004 in Dar Es Salaam, Tanzania, with the Declaration on Peace, Security and Development in the Great Lakes Region. States and member organisations of the Group of Friends and Special Envoys are: Austria, Belgium, Canada, China, Denmark, the EU, Finland, France, Gabon, Germany and Greece. The other members are: the Holy See, Ireland, Italy, Japan, Kuwait, Luxembourg, the Netherlands, Nigeria, Norway, Portugal, Russia, South Africa, Spain, Sweden, Switzerland, the UK and the USA. The group is co-chaired by Canada and the Netherlands⁶⁹⁴.

The general secretariat is based in Bujumbura, Burundi. Its purpose is to coordinate the initiatives of the organisation which has very general objectives, namely: the promotion of peace and security; democracy and good governance; economic development and regional integration; to deal with humanitarian and social issues. The executive body of the ICGLR is the Regional Inter-ministerial Committee, which evaluates the progress and evolution of the programs, and the Summit of Heads of State is its supreme body⁶⁹⁵. Among other initiatives, the ICGLR has called on member countries to find solutions to curb the illegal exploitation of natural resources and promote sustainable resource management⁶⁹⁶. The aim was to establish a regional resource certification mechanism as well as promote cooperation among member countries. Initially, the ICGLR has scarcely funded the certification program⁶⁹⁷, however this has been the beginning of a shared desire, at least according to their stated intentions, to fight against cross-border smuggling and particularly, the smuggling of minerals.

The ICGLR later approved a Technical Unit for Natural Resources under the Democracy and Good Governance program. The Technical Unit must combat illegal trafficking and preserve natural resources, with the medium-term objective of promoting fairer trade that can reduce socio-

⁶⁹⁴ Cf. About ICGLR, Background; www.icglr.org; accessed on 13/11/2017.

⁶⁹⁵ Réseau de recherche sur les opérations de paix, *Fiche d'information de l'organisation: CIRGL*; www.operationspaix.net.

⁶⁹⁶ CIRGL, *Programme Régional d'Action: Développement Economique et Intégration Régionale*, 2006, p.8; www.icglr.org.

⁶⁹⁷ With funding of USD 94,215 in 2007. Cf. CIRGL 2006, p.18.

economic inequalities⁶⁹⁸. The transition to the formal economy is done with a global approach and shared by several countries. For this reason, the Regional Initiative against the Illegal Exploitation of Natural Resources was created. It has six specific tools: the Regional Certification Mechanism for four strategic minerals present in the region (gold, tungsten, tin, tantalum); the harmonisation of national legislation on the mining sector in the different states that are part of the ICGLR; the creation of a shared regional database, created from data from member states; the formalisation of ASM, which are part of the informal sector; the implementation of the Extractive Industries Transparency Initiative (EITI), an international resolution to promote transparency in the sector; the whistleblower system to denounce illegal logging with the monitoring of violations of the regional certification mechanism⁶⁹⁹.

Certainly one of the greatest successes achieved by the ICGLR is to bring together actors who have long remained in conflict. Secondly, since the creation of the ICGLR, we have seen the development of approaches towards a system for the traceability of minerals. This is the beginning of a slow and complicated journey that is composed of several steps that we will analyse in the next paragraphs. As we saw in the previous chapter, some coalitions of NGOs that we have analysed and interviewed are part of the ICGLR. Other organisations we have met have harshly criticised this organisation, accusing it of being a tool to corrupt civil society. For this reason too we have briefly summarised the activities carried out by this organisation.

3.3.2. The Extractive Industries Transparency Initiative (EITI)

The EITI is an international standard that aims to promote good governance of oil, gas and mineral resources. The EITI seeks to promote transparency, including financial transparency, in the sector and throughout the supply chain. The primary objectives are: to encourage good governance and effective management of resources; to empower businesses and more generally the extractive sector; to promote reforms to curb corruption. It was created in 2003 at a conference in London, UK. At this time there was significant pressure from CSOs, NGOs and academics who demanded answers to the so-called resource curse, also known as the paradox of plenty⁷⁰⁰ where countries naturally rich in resources and who base their economic systems on the export of these, see their

⁶⁹⁸ ICGLR, *Plan for the Regional Initiatives on the Fight against Illegal exploitation of Natural Resources*; www.icglr-rinr.org/index.php/fr/irrn/contexte.

⁶⁹⁹ GRADO V. *Conflict minerals e responsabilità sociale d'impresa : le azioni dell'ONU, dell'OCSE e della Conferenza Internazionale sulla Regione dei Grandi Laghi*, Ordine Internazionale e Diritti Umani, 2016, p.857.

⁷⁰⁰ LE BILLON P. *Matières premières, violences et conflits armés*, Revue tiers monde, 2003, pp.297-321; SACHS J., WARNER A. M. *The curse of natural resources*, European economic review, 2001, pp.827-838.

economic growth greatly disrupted because of several empirically demonstrable reasons.

The birth of the EITI is due, among other things, to the public awareness campaign Publish What You Pay organised in 2002 by a group of NGOs and other civil society organisations. They were grouped into a charity registered in England, but active worldwide. The founding members are: Open Society Institute, CAFOD, Global Witness, Oxfam GB, Save the Children UK, Transparency International UK. They advocated for the transparency of the extractive industry and asked the mining companies how much money was being paid to governments for extraction rights. Publish What You Pay is now an international movement that brings together over 700 organisations globally and 50 networks nationwide. They campaign for a fair and transparent mining sector and for an equal distribution of the profits among the communities. We report that among the active members in Publish What You Pay we find several organisations, networks and NGOs that have been interviewed for the case study of this thesis. Among the members based in the DRC, we find: RIO and CREF; among the members based in Belgium we find: CJP⁷⁰¹.

Thanks to the pressure of a group of NGOs working together on the principles of good governance and transparency, the EITI standard was formed. The EITI members are based in 51 countries: in each of these, a coalition is formed by the government, the companies and the multi-stakeholder group. At the national level, these actors are responsible for overseeing contracts and licenses, production, revenue collection, income allocation, social and economic spending. International oversight and coordination is provided by a multi-stakeholder board composed of representatives of governments, CSOs, extractive companies, international and financial organisations. Countries are stopped periodically and subject to controls according to a validation procedure. Finally, country progress is categorised as: satisfactory; significant; or inadequate/suspended. In addition to verifying that countries are complying with the standards, this procedure serves to promote dialogue and to promote common and generalised global rules.

In line with the EITI 2017 report, the organisation's standards have contributed to significant reforms in some countries, which have, among other things, improved their ability to raise revenue. According to the report, the EITI has been responsible for promoting the debate on the transparency of the sector, especially in relation to trade in ASM products. Finally, "there is mounting evidence that information release supports greater competition around government contracting and that being

⁷⁰¹ Cf. *Publish what you pay*; www.pwyp.org.

an EITI signatory leads to greater inflows of both aid and foreign direct investment"⁷⁰².

3.3.3. The principles of OECD Due Diligence Guidance for Responsible Business

The Marshall Plan created the European Organisation for Economic Co-operation (OEEC) in 1948. It was born after WW2 to channel reconstruction and foster cooperation between European states at the moment that governments were exploring the interdependence of their economies. Given the success of the organisation, in 1961 the organisation opened its doors to non-European countries and became the Organisation for Economic Co-operation and Development (OECD). The OECD is an IO whose member countries share an economic system based on the market economy: it focuses on economic studies and now has 36 member countries; it is composed of several affiliated agencies and its studies include economic reports, statistical databases, forecasts on economic growth and the financial sector. The OECD is characterised by a very liberal view of the economy and politics, which is why it is often criticised⁷⁰³.

The OECD also promotes corporate social responsibility: in 1976 the organisation published the Guidelines for Multinational Enterprises and the Declaration on International Investment and Multinational Enterprises. These are non-legally binding standards that also concern governments. The objective is to promote the transparency of investments and economic activities, with recommendations to promote ethical business conduct, respect for work and the environment. An OECD initiative is particularly important for conflict minerals laws. This is called the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. The guide was published following five consultations between 2009 and 2011 and reflects the position and political commitment of OECD countries as well as the ICGLR⁷⁰⁴. Through a multi-stakeholder approach, the eleven countries of the ICGLR, industry representatives, civil society and the UN expert group on the DRC, support the principles of diligence contained in the guide.

According to the UN, it is particularly important to stabilise the situation in the DRC, a country where all of these actors are strongly engaged⁷⁰⁵. The guide contains practical guidance for companies to help them to "respect human rights, observe applicable rules of international

⁷⁰² EITI, *Progress Report 2017*, p.16; www.eiti.org.

⁷⁰³ MAUREL C. *L'OCDE, instrument efficace de l'offensive libérale mondiale*, Revue Transform, 2011, pp.204-209.

⁷⁰⁴ OECD *Due Diligence Guidance for Responsible supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, second edition, OECD Publishing, 2013, p.3; www.oecd.org.

⁷⁰⁵ UNSC, S/RES/1952 adopted on 29/11/2010.

humanitarian law in situations of armed conflict, avoid contributing to conflict and cultivate transparent mineral supply chains and sustainable corporate engagement in the mineral sector"⁷⁰⁶. It can be accessed and used by any company working in conflict-affected or high-risk areas. The guide is global in scope and explains to companies how to better identify and manage the risks faced by all players in the mineral supply chain including miners, local exporters, processors, manufacturers or brands using ores in their products⁷⁰⁷. Its adoption dates back to 2011 and since then has become like an upstream source at the international level, while the US Dodd-Frank Act, the EU Conflict Minerals Regulation and the Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains, employ the Guide like a reference.

3.3.4. The Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the so-called Obama's Law, as Congolese mining workers have dubbed it) was enacted on 21 July 2010. It is a federal law from the USA with a main objective to prevent an economic crisis such as that of 2008 from happening again. Section 1502 of this law deals with conflict minerals⁷⁰⁸, a concept introduced by the same law to define cassiterite, coltan, wolframite, gold and their derivatives: tin, tantalum and tungsten. The law was necessary, since the US market is one of the most developed in the world in the fields of electronics, aerospace, automobile, health, defence and security, etc. In addition, the geopolitics of natural resources has long been a strategic concern of exporting and importing states: this is one of the reasons why first the US, then the EU and finally, China, took the initiative to legislate⁷⁰⁹. Moreover, the Pentagon's political and economic commitment to the Great Lakes region⁷¹⁰ was in danger of being rendered useless by the growth of armed groups that made the region increasingly unstable⁷¹¹. Finally, several civil society groups have worked for a long time on the problem of conflict minerals; these have largely contributed to the perpetuation of the conflict in the east of the

⁷⁰⁶ OECD 2013.

⁷⁰⁷ *Ibidem*.

⁷⁰⁸ Dodd-Frank Wall Street Reform and Consumer Protection Act relating to the use of conflict minerals, sec. 1502: (a) Sense of Congress on exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo. It is the sense of Congress that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency in the humanitarian situation therein.
Cf: Final Rule: www.sec.gov.

⁷⁰⁹ LE BILLON P. 2013, p.81.

⁷¹⁰ NGOLET F. *African and American Connivance in Congo-Zaire*, Africa Today 47, no.1, 2000, pp.65-85;
KHADIAGALA G. M., LYONS T. *African foreign policies: power and process*, Lynne Rienner Publishers, 2001, pp.87-106.

⁷¹¹ MARYSSE S. *Regress, War and Fragile Recovery: The Case of the DR Congo*, In: MARYSSE S., REYNTJENS F. *The Political Economy of the Great Lakes Region in Africa*, Palgrave Macmillan, London, 2005, pp.125-151.

DRC which has caused at least 5,4 million deaths since 1998, massive human rights violations, including sexual violence, trafficking in human beings and the exploitation of workers, sometimes children⁷¹².

During this period, some NGOs, as well as academics, research centres and IOs, began publishing very detailed and accurate reports that demonstrated the relationship between extraction and the persistence of the conflict. Among these NGOs, there is Global Witness which, thanks to the help of numerous teams of local researchers, has been able to reconstruct and explain the entire supply chain of MNCs⁷¹³. Another famous organisation that has led the way, engaging in political advocacy in the US, to support Dodd-Frank Section 1502, is the Enough Project. This non-profit organisation, from 2010, has put tremendous pressure on Congress and industry, often engaging celebrities, to the point of getting a partial response to its demands. The catalyst for creating a conflict minerals policy was a trip to eastern DRC from Senator Mr Sam Brownback, who worked on this issue with Enough. The first attempt to pass a specific law failed in Congress and subsequently the political process weakened the original proposal. Finally, the senator managed to pass a less ambitious law by adding an amendment to the Dodd-Frank Act⁷¹⁴. This was however a success for political advocacy groups, like Enough.

The law requires MNCs of the mining sector listed on Wall Street to report their extraction activities of the four regulating minerals to the Security and Exchange Commission. This federal government agency aims to: protect investors; facilitate the movement of capital and maintain transparent and efficient trade. MNCs are obliged to prove the origin of the four precious minerals used in their products in order to demonstrate that they did not finance the conflict between the Congolese army and the armed groups. A traceability scheme obliges MNCs to trace minerals: this is possible thanks to the support of private companies, such as ITSCI (formerly ITRI), which support due diligence and responsible trade⁷¹⁵. The service offered by these companies is the monitoring of the supply chain, based on the OECD guidelines. These specialised companies check the extracted material and certify it through a labelling system. The cost of this system is borne by the traders of minerals.

⁷¹² CROOK J. R. *New U.S. Legislation Requires Transparency in Conflict Minerals Trade*, The American Journal of International Law 104, no. 4, 2010, pp.668-672.

⁷¹³ GLOBAL WITNESS « *Face à un Fusil, que peut-on Faire ?* » *La guerre et La militarisation du secteur minier dans L'est du congo*, Juillet 2009.

⁷¹⁴ RADLEY B., CHASE S. 2015, min.53:40-59:12.

⁷¹⁵ Cf. ITSCI Providing support for Due Diligence to Enable Responsible Trade; www.itsci.org.

3.3.5. Actions of NGOs and the effects of the law

One of the problems with the labelling system is that exporting companies have passed on the cost of certification directly to their Congolese suppliers, who in turn passed on the cost to the miners who are forced to reduce the purchase price of the raw material⁷¹⁶. As Mr Erik Kajemba repeated to us after his conference at the OECD in Paris:

"all the cost is supported by the last; by the poorest in the supply chain, the miners. They are opposed to this type of mechanism, if it is up to them to pay for them"⁷¹⁷.

For these reasons, the law has immediately created a climate of uncertainty among mineral brokers and also among electronics focussed MNCs, who did not know whether or not their Congolese suppliers were affected by the problem of minerals coming from conflict affected areas. In the beginning, many MNCs therefore suspended their purchase from Congolese brokers, instead of adapting to the new rules. They were afraid of public humiliation by CSOs or NGOs, the only real penalising tool, as the law does not provide effective sanctions⁷¹⁸. They also often had to incur higher costs to change their suppliers and buy raw materials in other countries. In North Kivu this situation has led to the collapse of mineral exports, in a region that accounts for two-thirds of its economy in this sector and in 2011, in the city of Goma, the number of exporters fell down from twenty-five to three. This has favoured Chinese exporters and companies, which were not covered by the law and have consequently been able to buy minerals at very low prices⁷¹⁹. The abstention from the Congolese mineral market adopted by some MNCs was clearly counter-productive for everyone. The fear of MNCs of being exposed to the public, the media or NGOs, as an exploiter of people and resources, with the guilt of provoking conflicts, was real. In this way, two factors are observable. On the one hand, the action of NGOs is effective; it has an effect on public opinion which in this way demonstrates the credibility and legitimacy of their strategies. On the other hand, we can also see how NGO action can create real problems for the local communities who they are trying to protect. In fact, many protests have occurred in mining communities where miners have lost their jobs as a result of the Dodd-Frank law and specifically due to the Kabila mining ban which we will analyse below. It is possible that this kind of action by NGOs could sometimes be based on incomplete or inaccurate studies, or inspired by an ethic that hardly matches the reality.

⁷¹⁶ L'OBS *Minerais du sang : la 'loi Obama' à l'épreuve de la réalité congolaise*, 3/3/2017; www.nouvelobs.com.

⁷¹⁷ Interview with KAJEMBA E. 23/4/2019.

⁷¹⁸ CUVALIER J. G. R., VAN BOCKSTAEL S., VLASSENROOT K., WAKENGE C. I. 2014, p.9.

⁷¹⁹ *Ivi*, pp.20-21.

Another consideration is that these types of action could be carried out in an excessive or impulsive way that does not take into account other factors, for example economic issues.

The system suddenly imposed by Obama's Law has joined the Kabila's initiative of 2010: they have paralysed the Congolese minerals market, a source of direct and indirect support for millions of people. Some miners declared themselves ruined by the Obama Law because they could no longer provide for their families. The miners were poorer; they had no work and could not improve their living conditions⁷²⁰. As if that were not enough, some academics have affirmed that the Dodd-Frank law could have reinforced a number of perverse dynamics in the Congolese mining sector, for example the illegal trade by armed groups⁷²¹. This fact also makes us observe how sometimes academics have dissociated themselves from this issue; from the position of some NGOs and from the conclusions of their research. It is consequently more difficult to understand who was responsible and how the problem could have been approached differently. What we understand at this juncture is that although NGOs take positions on subjects they have studied, relying on other actors, legitimately supported by donors, they can sometimes be wrong and find themselves clashing with other positions. Moreover, the conclusions drawn from their research can also have negative or dramatic consequences on reality.

In addition, the introduction of Dodd-Frank has also marked an increase in tensions between the ASM and the industrial mining sector, the LSM. In fact, the Congolese authorities generally give little attention to the ASM, favouring companies, often foreigners, which operate in the LSM. For example, artisanal miners, who are the majority, are often driven out of their land in a violent manner and without any form of compensation if a MNC decides to exploit an area. Kinshasa's central government favours foreign mining companies and LSM, selling concessions over ASM. Thus, local communities, which often survive thanks to ASM, have found themselves in an even more precarious situation⁷²². At the risk of losing their only source of income, farmers gathered in cooperatives and have organised strikes or demonstrations or, worse, they have enlisted in armed groups to fight foreign companies⁷²³. From another point of view, it is important to emphasise that the Dodd-Frank Act also has its merits: first, it has promoted a reform of the Congolese mining system and has encouraged the DRC to engage, in part, in initiatives of due diligence; second, it has

⁷²⁰ RADLEY B., CHASE S. 2015, min:53:00-53:40.

⁷²¹ CUVALIER J. G. R., VAN BOCKSTAEL S., VLASSENROOT K., WAKENGE C. I. 2014, p.2.

⁷²² MAX IMPACT et. al. *Rapport de l'étude sur les paiements dans le secteur minier artisanal au Sud Kivu*, 2016, pp.1-43.

⁷²³ CUVALIER J. G. R., VAN BOCKSTAEL S., VLASSENROOT K., WAKENGE C. I. 2014, p.17.

changed the mindset and approach of the electronics industry and even mining companies⁷²⁴. Another significant merit of the Dodd-Frank has been to change the mentality of some of the consumers because it helped bring awareness to the general public of the connection between the consumerism induced by the electronic industry and the development of conflicts. Some consumers have become aware of the socio-environmental cost of everyday consumer products and have realised that their choices have a real impact. This was largely due to NGO awareness campaigns in various countries around the world. In addition to campaigns, it is also important to underline the commitment of NGOs in various advocacy activities, such as conferences and debates organised in schools and universities in order to achieve that goal.

We want to mention as an example, the awareness-raising actions of the non-profit organisations CJP and CNCD-11.11.11 in Belgium: they have organised numerous civic training actions, among others projects, in schools and universities. Also, at the UNamur, in the framework of the *Midi Fucid* conferences have been organised and meetings on the theme of conflict minerals, on the situation in the DRC, on the consequences of massive consumption on mineral extraction and conflicts⁷²⁵. In other regions of Belgium, specific groups organised by NGOs have raised awareness about the consequences of extreme mineral exploitation⁷²⁶. Several campaigns have also been disseminated recently on social media and on the internet by NGOs. For example, Caritas International has invested in the RDC campaign *#derrierelecran*: here it was explained how telephone devices, televisions and computers, but also photovoltaic panels and wind turbines are responsible for the daily consumption of tons of rare minerals. The campaign aimed to raise awareness about recycling, buying more fair-trade products and reducing consumption⁷²⁷. Another example concerns Italy. A group of people supported from various Italian NGOs, some of which are federated at European level with the EurAc NGO network, has organised a travelling exhibition called *Clandestine Minerals*, showing the exploitation of minerals used in technological products, extracted and illegally traded in Africa and worldwide⁷²⁸. For a last example, let us turn to the USA, where the Conflict-Free Campus Initiative has become popular and widespread. It was organised by the NGO Enough, often criticised for its impetuous actions. In this case, however, its advocacy has undoubtedly contributed to raising awareness among university students on the issue of conflict

⁷²⁴ *Ivi*, p.2.

⁷²⁵ Cf. FUCID, *Forum Universitaire pour la Coopération Internationale au Développement*; accessed on 14/4/2019; www.fucid.be.

⁷²⁶ Cf. More information about the advocacy activities of Justice et Paix available at: COMMISSION JUSTICE ET PAIX *Rapport d'activités 2017*, p.10; www.justicepaix.be.

⁷²⁷ Cf. CARITAS INTERNATIONAL, JUSTICE ET PAIX, *Campagne RD Congo #Derrierelecran: Derrière l'écran : De la RD Congo à la Belgique*, video 2019; www.caritasinternational.be; accessed on 14/4/2019;

⁷²⁸ Cf. *Minerali clandestini, una mostra eretica*; www.mineraliclandestini.org; accessed on 14/4/2019;

minerals. The initiative has directly targeted some large companies that produce technologies, such as Motorola, Apple, Intel. The campaign in fact has put pressure on companies to be responsible for their purchases of raw materials⁷²⁹. It is in this situation that some of these companies have stopped buying minerals from the DRC, for fear of being targeted by boycott campaigns for their products.

However, it remains extremely difficult to assess the impact of this law on the mining sector of the DRC and on the daily life of the inhabitants, also because other problems related to price fluctuations in the global market, to governance and security have all had significant impact on the regions concerned. The power and impact of the actions promoted by NGOs is also difficult to evaluate in detail. It is necessary to remember that the actors present are many, some of them extremely influential or powerful, such as large multinationals or governments. In the next chapter, and in contrast to this, we will explore how a single person in power has had the opportunity to decide the fate of a country, without being particularly influenced by NGOs.

3.3.6. The partial failure of the Kabila's minerals export ban

Between September 9, 2010 and March 10, 2011, Joseph Kabila's government banned mineral exports⁷³⁰. The ban, which affects three eastern provinces of North Kivu, South Kivu and Maniema, was formally promulgated to combat chronic insecurity in the regions⁷³¹. The state also wanted to restore control in the eastern regions and promote, among other things, the demilitarisation of some areas⁷³². This self-imposed embargo by the Congolese national government has had many negative effects on the mining regions of the east of the country. In fact, this announcement was made following the approval of the Dodd-Frank Act in the US, which, as we have seen, had already created many uncertainties among the economic actors concerned. According to numerous testimonies collected and a rich literature in the eastern regions between 2010 and 2011, the ban on Kabila paralysed the economy of the region and had some severe effects, such as: increased unemployment, dropout, crime, recruitment by armed militias, insecurity and debt⁷³³. In agreement with scholars with a lot of experience in the region, the ban had first an immediate effect on the miners, their families and second, on the economy of the provinces concerned, where the minerals are extracted. Among the various consequences of the embargo, there has naturally been a collapse

⁷²⁹ Cf. The Conflict-Free Campus Initiative; www.enoughproject.org; accessed on 14/4/2019;

⁷³⁰ CUVALIER J. G. R., VAN BOCKSTAEL S., VLASSENROOT K., WAKENGE C. I. 2014, p.2.

⁷³¹ BBC World News Africa, *DR Congo bans mining in eastern provinces*, 11/9/2010; www.news.bbc.co.uk; accessed on 19/4/2019.

⁷³² VIRCOULON T. 2011.

⁷³³ CUVALIER J. G. R., VAN BOCKSTAEL S., VLASSENROOT K., WAKENGE C. I. 2014, p.10.

in the price of the materials sold at the origin of the supply chain. The price of some materials, such as cassiterite, has dropped even fourfold⁷³⁴. Moreover, in some areas it has been documented that around four-fifths of the miners have lost their jobs. In other contexts, the number of miners has decreased by seventy percent. There was widespread closing of bars and restaurants; taxis no longer circulated, houses lost tenants, construction sites were stopped and poverty increased considerably⁷³⁵. As a result, lack of work and therefore of wages led to increased malnutrition and other problems related to lack of medical care. Many inhabitants of the mining areas have had to abstain from buying basic necessities such as food and clothing⁷³⁶.

It is important to remember that this ban was supported, at least in part, by NGOs. For example, campaigns such as *Geen bloed aan mijn GSM* (No blood on my cell phone), which had been very prominent in the twentieth century, has had an effect. These campaigns were designed, supported and disseminated by well-known and legitimate NGOs, as active in various countries with many supporters, such as Global Witness, Human Rights Watch, Friends of the Earth, The Rainforest Foundation, but also Congolese NGOs such as ASADHO Katanga⁷³⁷. However, it must also be noted that it was not only NGOs that took such a position at the time. For example, there are also documentaries that discuss about the problem and, in general, the media has given some prominence to this issue⁷³⁸. Despite everything, it must be emphasised that, with the Dodd-Frank Act and the Kabila embargo, some positive progress has been documented. For example, some mining sites where conflict minerals were extracted are no longer under the control of armed groups, because their presence is less tolerated. It also seems that in the absence of mining work, some people have resumed other professional activities, such as in the agricultural sector. Moreover, it appears that the new control mechanisms have in part favoured complaints of fraud and abuse in the ASM. For example, new institutions have been set up to denounce human rights violations and corruption⁷³⁹.

3.4. The EU Conflict Minerals Regulation

A few years after the approval of the Dodd-Frank law, the EU also decided to create a European regulation. The regulation was drafted by the DG Trade on the model of section 1502 of the Dodd-

⁷³⁴ *Ivi*, p.11.

⁷³⁵ *Ivi*, p.12.

⁷³⁶ GEENEN S. 2012, pp. 327-328.

⁷³⁷ CUVALIER J. G. R., VAN BOCKSTAEL S., VLASSENROOT K., WAKENG C. I. 2014, p.6;
Cf. *Campaign of the Month: No Blood in my Cell Phone*, 1/12/2006; www.wri-irg.org.

⁷³⁸ APPLEBAUM S. *A shocking connection: film-maker uncovers Blood in the Mobile*, The Guardian, 10/10/2011.

⁷³⁹ CUVALIER J. G. R., VAN BOCKSTAEL S., VLASSENROOT K., WAKENG C. I. 2014, pp.12-13.

Frank, "with the idea to write an effective law but without repeating the errors of the USA law and with the aim to protect the trade with Central Africa"⁷⁴⁰. In 2014 the EC and the EU's High Representative for Foreign Affairs presented a Draft Regulation on Responsible Sourcing of Minerals. This document was accompanied by a joint communication and accompanying measures to be completed before the law entered into force. The EU Conflict Minerals Regulation is an initiative of the EC and more specifically from the DG Trade. At the time, the Commissioner for Trade, Karel De Gucht, in office from 2010 to 2014, led the initiative. In particular, it seems that the Belgian commissioner was pushed to legislate by his own compatriots:

"As an officer, I have generally noticed that the influence of Belgians on this issue was very strong. Mr Louis Michel, for example, had a big impact. At every stage of the legislation, the Belgians, but also the Dutch, exercised great power. The two countries that have made the biggest impact are certainly Belgium and the Netherlands. The Netherlands worked through Ms Judith Sargentini in the EP, but also through the Presidency of the Council of the EU⁷⁴¹. I must say that without the Dutch Presidency the legislation would not have been adopted. The Luxembourg Presidency⁷⁴² was important for moving the text forward. The presidency of Italy⁷⁴³ and of Slovakia⁷⁴⁴, have also made a important contributions"⁷⁴⁵.

Even though the initiative was launched by the EC, this interview also shows us that among the main actors in the process of approval of the regulation, the Council of the EU and, therefore, the different MSs, played important roles. Although we have often felt that the game was dominated by the EC and the EP, we now recognise that the Council also had a decisive influence. It is clear that each of these institutions in turn represents the interests of other power groups. We also believe that the same interest groups, such as NGOs or industry associations, have influenced several actors simultaneously. We will return to this later in this chapter.

The EU regulation is based on the OECD Due Diligence Guidance, which was published for the first time in 2011. Both initiatives are voluntary and global in scope, in the sense that they are not tied to a specific geographic location, unlike US law. In particular they address all conflict affected and high-risk areas. These areas include areas of conflict and areas where there is a lack of security and governance, for example, in failed states and where there is a widespread violation of human

⁷⁴⁰ ANONYMOUS interview with a EC DG Trade Officer who worked on the dossier, registered on 8/3/2019.

⁷⁴¹ January-June 2016.

⁷⁴² June-December 2015.

⁷⁴³ June-December 2014.

⁷⁴⁴ June-December 2016.

⁷⁴⁵ ANONYMOUS interview 8/3/2019.

rights or international law. According to EC studies, the region's most concerned with this phenomenon are those with abundant natural resources which also suffer from conflicts of varying nature and intent. These regions were defined as West Africa, Central Africa and some regions of South America and East Asia⁷⁴⁶.

The regulation has three main declared objectives. First, it aimed to break the link between the exploitation of minerals and conflict. Secondly, to promote a responsible supply of minerals for European companies; in fact, conflicts cause instability which in turn could in turn interfere with the trend in prices and on the quantities produced for the market⁷⁴⁷. The last objective was to incentivise EU operators in every part of the supply chain or mineral market, to comply with the new responsible regulation⁷⁴⁸. The regulation is addressed to EU importers (estimated between six hundred and one thousand) and also to about five hundred smelters and refiners that work with the EU without necessarily being based in the region. The initiative has also had an indirect effect to promote responsible sourcing for companies based outside the EU, thanks to the EC white list of global smelters and refiners who have proved to be responsible sources. Respecting Due Diligence, "means acting with reasonable care and investigating an issue before making a decision. With regard to the minerals covered by the regulation, it means that companies must check that what they buy is sourced responsibly"⁷⁴⁹, preventing conflict minerals and metals from being imported to the EU.

From the time the regulation enters into force, importers will have to comply with the five-step framework for the supply chain that the OECD has underlined in the document: Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas (OECD Guidance). The framework which EU importers are required to comply with refers to the following five steps: strong company management systems; identify and assess risk in the supply chain; design and implement a strategy to respond to identified risks; carry out an independent third-party audit of supply chain due diligence; report annually on supply chain due diligence⁷⁵⁰.

⁷⁴⁶ EC Directorate-General for Trade *The regulation explained*; www.ec.europa.eu/trade/policy; accessed on 12/3/2019.

⁷⁴⁷ EURAC *Mesures d'accompagnement au Règlement de l'UE sur l'approvisionnement responsable en minerais. Pour un renforcement de la gouvernance du secteur minier artisanal en RDC*, 2017, pp.5-6.

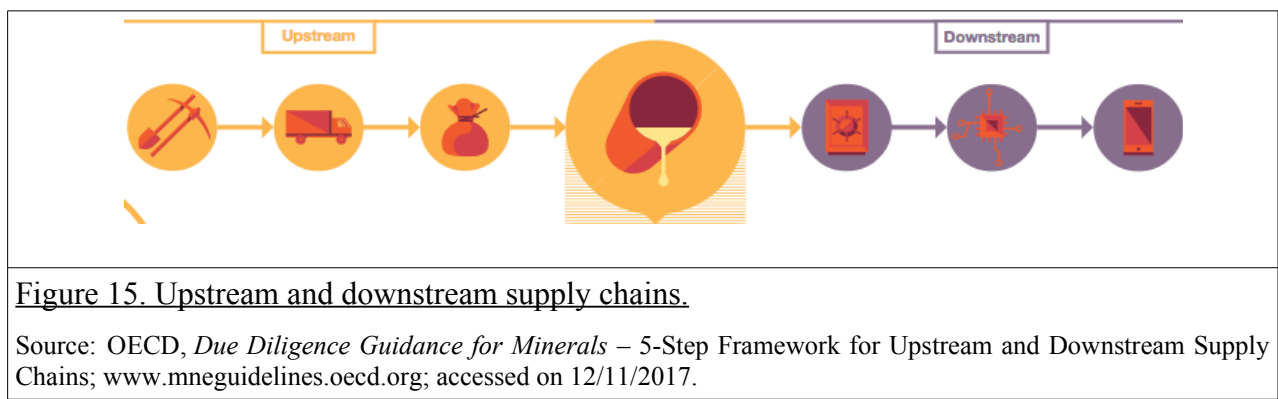
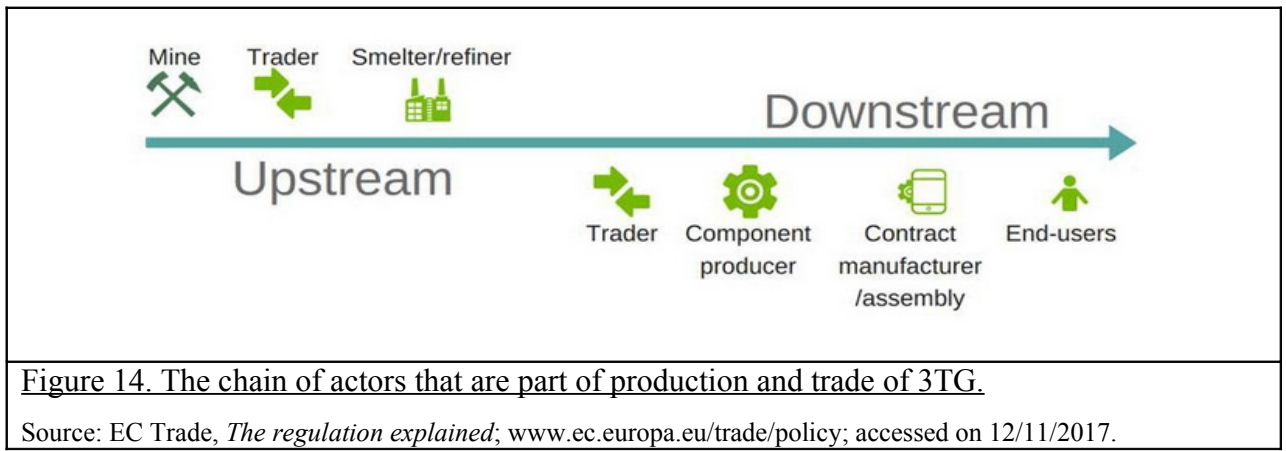
⁷⁴⁸ EC MEMO/14/157, *FAQ - Responsible sourcing of minerals originating conflict-affected and high-risk areas: towards an integrated EU approach*, Brussels, 5/3/2014.

⁷⁴⁹ EC Directorate-General for Trade *The regulation explained*.

⁷⁵⁰ The complete tab is available in the annexes.

OECD *Due Diligence Guidance for Minerals – 5-Step Framework for Upstream and Downstream Supply Chains*; www.mneginelines.oecd.org; accessed on 12/11/2017.

The chain of actors that comprise production and trade, and who could come into contact with the conflict minerals, is long and widely distributed around the world. This is shown below in two different graphs that summarise the process:



This chain is divided into two parts: on the one hand we find the companies that look for and extract minerals, the upstream companies; on the other hand we find the companies that process the minerals and use them in the production of objects, the downstream companies. Upstream companies make up the most sensitive and risky part of the chain. They must comply with mandatory rules on due diligence. Among the downstream companies there are some that import directly, so they have to respect the regulation. Others, operating beyond the metal stage, are simply invited to make their supply chain more transparent, but have no legal obligations.

From another source, we can analyse the chain in another way. Table 4 below, elaborated by CJP, explains the path of minerals. We have reworked this scheme and we have also added the last part of mineral life: recycling.

<u>Table 4. The course of minerals.</u>
1. Miners: They work in mineral extraction areas. They can be dependent on ASM or LSM. In the ASM workers wage salary may vary from zero (no finding) to 5-8 \$ a day. NGOs often focus on this part of the chain to legitimise their actions.
2. Merchants: they collect minerals from miners and pay them a price due.
3. Branches (Trading post): These are larger buyers. They bring minerals in large urban centres to resell to international branches (international trading post) who export them.
4. International buyers: these are foundries or large mineral processing industries. These industries buy large quantities of raw materials from international branches (international trading post). In these places the minerals are transformed into metals.
5. Hi-Tech and other companies: they buy minerals processed into metals and apply them to their products. Often purchases are made by intermediary companies that deal with a part of production process.
6. Stores: they commercialise the products of large multinational companies. Sometimes, in some countries, they also handle the collection of electronic materials for recycling. The stores are involved in shipping used items to recycling companies.
7. Customers: they buy the products in stores. Normally they do not have any clear information on the origin and composition of the goods they buy.
8. Recycling companies: they disassemble electronic items and retrieve the recyclable parts. Then they forward the recyclable material to the foundries or mineral processing industries (4. International buyer).
This figure was adapted from author. Source: COMMISSION JUSTICE ET PAIX <i>Capitalisme et extraction minière: un divorce nécessaire. Vers des alternatives durables</i> , Etude 2015, p.15.

The diagram above shows the route of minerals from mining to when they are sold in electronic devices. The first difficulty is that tracing all stages is a very difficult challenge, as there are a lot of actors involved in this chain. Moreover, these processes take place in many countries around the world: they have very different laws, interests and cultures, political and economic situations. This graph also serves to understand some of the difficulties that the law may incur when applied: tracing the whole path of minerals, especially the beginning of the path, is a rather complex activity.

The second difficulty lies in the fact that the law is optional, causing its application to be ineffective. Indeed, the self-certification system designed by the initiative is to be considered voluntary. In this sense, there have been much opposition on that point from NGOs during the process of approval of the law. In fact NGOs have asked for the initiative to be mandatory, but in the end the legislator did not accept this request.

Each EU MS is responsible for controlling importers who accept the regulation. EU importing

companies, that carry out due diligence are required to report annually on the goods they are dealing with. They are required to provide supporting documents such as: the list of minerals they import; their list of suppliers; the list of countries from which they are supplied; imported quantities; the dates of mineral extraction. MS are required to analyse the documents provided by importers and, if necessary, carry out checks or inspections. If an importer accumulates supplies from conflict-affected and high-risk areas, it is required to provide extra information, namely: the name of the mine from which the imported ore was extracted; the name of the smelter or refiner that has wrought the mineral; "the taxes, fees and royalties paid"⁷⁵¹. No sanctions are imposed on companies that do not comply with the regulation. However MS are required to report improper importing and to address the problem over a certain period of time.

3.4.1. Actors involved, main stages and accompanying measures

In May 2017, the EU adopted the regulation. Its purpose is twofold. The direct goal is to change the practices used by companies to import minerals from sensitive regions, where serious conflicts occur. The indirect goal is also to promote governance practices in countries where minerals are extracted. Furthermore, as stated by EC officials, it should not be forgotten that this regulation serves to protect EU trade with Central Africa, in fact:

"it is always necessary to remember that this is a regulation that affects imports within MSs. It concerns [EU] customs"⁷⁵².

The sensitive minerals are the so-called 3TG. The purpose of the regulation is to foster a transparent supply chain control system: this should reduce the risk of financing armed groups and prevent conflicts. The legislative process lasted around four years, during which many stakeholders sought to protect their interests through their influence. We recall that, after the EC submitted a draft law in 2014, it invited many stakeholders to consultations. In addition the EC worked closely with the EP and the Council, which have other stakeholders and receive other pressures. The main stakeholders involved and consulted by the European institutions have been: "civil society, including NGOs and groups campaigning for action to tackle the trade in conflict minerals; mining companies; traders, i.e. exporters and importers; smelters, refiners and manufacturers; countries in which mining and smelting takes place; companies operating downstream"; the OECD⁷⁵³. These actors had the

⁷⁵¹ EC Trade, *The regulation explained*.

⁷⁵² ANONYMOUS interview with a EC Policy Officer responsible for private sector and trade, who worked on the dossier, realised on 23/4/2019.

⁷⁵³ EC Trade, *The regulation explained*.

opportunity to consult with EU decision-makers during the law approval process. Hereinafter we refer to the indicative timetable for the entire approval process. Finally, let us summarise the main steps in the approval process of the regulation.

<u>Table 5. The main steps in the approval process of the Regulation.</u>		
2014	March	Launch of the initiative for the will of the EC; the proposal is composed by a joint communication and an impact assessment.
2015	March and April	The EP present amendments to the EC's proposal. Voting on amendments come from the report of INTA commission. This is the phase of the inter-institutional negotiations (trilogue) between the EP, the EC and the Council of European Trade Ministers, during which the proposal is discussed.
	May	First reading by the EP plenary session.
2016	November	The three institutions agree on the final text of the regulation.
2017	March	The EP vote and adopt the final text of the regulation.
	April	The Governments of MS adopt the text of the regulation by the Council.
	May	The president of the European Council and the president of the EP, sign the text in Strasbourg that will become law. A few days later, the text is published in the Official Journal of the EU. Hence after 20 days, the law entered into force.
2016 - 2020		Period during which the accompanying measures, which are funded with € 20 million, are identified.
2021	January	Definitive entry into force of the law. All companies must submit to due diligence obligations.
2023		The first revision of the regulation is foreseen.
Source: PARTZSCH L. 2018, p.480.		

The period of transition, 2016-2020, will be used to arrange accompanying measures that have been set at € 20 million. In a joint letter, the vice president of the EC, the European Commissioner for Trade and the European Commissioner for International Cooperation and Development have agreed to sustain the regulation with a package of accompanying measures by the EU and its MSs. These accompanying measures should serve to support the operation of the regulation. These accompanying measures are contained in a communication published in 2014 and written by the EC and the EEAS. The intentions of the promoters of these measures is to: contribute to good governance; maximise the economic potential of the extractive industry; also indirectly supporting other peace building initiatives carried out by EU institutions (especially for the African Great

Lakes region)⁷⁵⁴.

Accompanying measures to EU regulation on responsible mineral sourcing include: I) support and technical assistance to companies that decide to provide responsible procurement, with particular attention to SMEs; II) a political dialogue with the countries most involved in the regulation: the main objective is to harmonise the laws of the countries and the different certification systems; III) to strengthen development cooperation, supporting local motivated actors (administrators, entrepreneurs, cooperatives, associations of civil society, etc.) to enforce the regulation and to commercialise non-conflict minerals; IV) the organisation of complementary initiatives to invite consumers, investors and customers to adopt responsible behaviours⁷⁵⁵.

The EC is required by the EP to submit an annual report assessing the results of the accompanying measures in order to assess their effectiveness. Accompanying measures represent the EU's strategy of seeking EU companies to participate in the self-certification mechanism provided for by law.

We now try to understand by way of example, some of these measures that are being decided in the EU and in the individual MS. Some of these measures have already been funded and are active, while others are still being discussed and negotiated. These measures are summarised in the table below.

Table 6. Summary of accompanying measures.

Private sector financial support measures, a project of DG Growth to support European businesses in complying with the regulation. The EC will financially support SMEs and will ensure visibility to companies that will undergo new certification and transparency rules.

Financial support to the OCDE for a value of € 1 million with a view to disseminating and promoting the OCDE Due Diligence Guide, especially in mineral producing and transit countries. A further € 3 million has been allocated to finance the spread of OCDE standards and to sustain other initiatives of this organisation.

Financial support to the ICGLR for a value of € 3 million for 3 years and is almost certainly renewable for another 3 years. The contribution, started in 2014, has supported the ICGLR to support the Regional Initiative Against Illegal Exploitation of Natural Resources (RINR). ICGLR's secretariat was also strengthened.

⁷⁵⁴ MALSMTRÖM C., MIMICA N., MOGHERINI F. Letter of 18/3/2015, Brussels.

⁷⁵⁵ EURAC 2017, pp.33-46.

The EU-UN partnership on land, natural resources and conflict prevention. Active since 2008, the EU-UN partnership has been created to fund non-static local actors. They deal with the resolution of community conflicts concerning land and natural mineral resources. NGOs and other CSOs were funded.

Support for monitoring cross-border activity. The EU plans to fund a new institutional support program for border control and monitoring of illegal activities.

Support of the EP to the Panzi Foundation in Mwega, South Kivu, the DRC. This foundation has been funded since it is well-known around the world. In particular, funded projects will take care of children and sex workers living near the ASM. This is actually a pilot project and presumably, other similar projects will also be funded.

German support to transparency in the raw materials sector. It includes accompanying measures to the EU regulation include funding from Germany for the mineral certification and traceability mechanism in the DRC. This support includes support for measures such as: certification of craft mines; support for ICGLR; support for the state and civil society to strengthen the governance of the mining industry.

European Partnership for Responsible Minerals (EPRM) a public-private partnership which was launched in 2016 in the Netherlands; it "aims to (I) increase the proportion of minerals produced in a responsible manner in conflict-affected and high-risk areas, and (II) to support socially responsible mineral mining that contributes to local development. The EPRM concentrates on 3T and gold and is aimed at all conflict affected and high-risk areas across the globe"⁷⁵⁶. We will analyse this partnership later on this chapter, as it involves representative of industries, governments and NGOs.

In this paragraph we have described the main points of the regulation. The next paragraph will proceed with an aim to understand the institutions' approach in relation to the various players involved, focussing particularly on NGOs.

3.4.2. Multi-stakeholder approach of the EU institutions

When the three main EU bodies, the EC, the EP and the Council were drafting the law that became the Regulation on Conflict Minerals, all were influenced by internal and external actors. All the three main powers of the EU took a position after consulting with their stakeholders of reference. Many actors, public and private, contribute in every law-making process. The approach of the EU

⁷⁵⁶ EURAC March 2017, pp.33-38.

institutions in constructing a regulation, takes into account the position of numerous actors: this is called multi-stakeholder approach. First of all, we would like to point out that this approach is also perceived by the actors who have contributed to the formation of the regulation from afar. In fact, during our field research, one of our interviewees pointed out the multi-stakeholder approach used by EU institutions:

"The advantage of European regulation is the consultation of all stakeholders. In fact we participated in two meetings with the deputies, thanks to the invitation of EurAc. We postponed our point of view and generally we were happy that the EU will have a law on this subject"⁷⁵⁷.

One aim of this research is to understand which key actors have contributed in developing the law and who their stakeholders of reference are. Another more difficult aim is to establish with certainty who are the most influential actors.

The EC, the politically independent executive arm of the EU, first proposed the law. In fact, the EC is responsible for drafting the regulation on behalf of all other institutions. The President of the EC appoints one or more Commissioners to develop the legislative project. In the specific case of the Conflict Minerals Regulation, the EU Commissioner for Trade was responsible for the writing of the law. As we learned from several of our interviews, following the approval of Dodd-Frank, the EU realised the need for similar regulation for Europe. Finally, in March 2014, De Gucht, the Commissioner for Trade, presented the draft law.

"I'll tell you a little about the origin, the process. At the beginning there was the Dodd-Frank law voted in the US in 2010. This was because the issue of conflict minerals had been raised, so the Americans started to move on the basis of a certification approach. That law was gigantic, as it contained the whole question of financial regulation and, crucially, in this framework they adopted historic measures on conflict minerals. They focussed on the DRC. In the inspiration of this important actor, the EU also decided to do something to address the issue because it had been made public. The EC had proposed the regulation in 2014, when the file was started with Commissioner De Gucht. In particular the administration of DG Trade had started the regulatory project which then came to the Commissioner"⁷⁵⁸.

At the same time, since the beginning of the process, different actors have become active, mobilising and intervening through their offices to work on the bill. In our case, MEP Ms Judith

⁷⁵⁷ Interview with KITUNGANO R. 15/12/2017.

⁷⁵⁸ Interview with RUIZ CARNEZ M. 25/2/2019.

Sargentini was particularly active in urging the various EU bodies to start the legislative process. In fact she was already sensitised to the subject, having already worked professionally before being elected to the EP.

"I was working for a long time on these kinds of issues, not necessarily with minerals. In 2003 there was already a problem with coltan, columbite-tantalite. At this time the coltan coming from the DRC was used for the Sony Playstation and other game related computers. So I knew something about minerals and conflicts and then the US legislation came along, which focussed on the four minerals; tin, tungsten, tantalum and gold. I leaned from the US reports and from the ONG reports by Global Witness, for instance, talking about the topic"⁷⁵⁹.

She has followed with great attention all the progress of the dossier at the EP organising, among other things, numerous meetings; hearings, debates, including public ones, which we also participated in between 2014 and 2016. These events included all the stakeholders.

"I worked a lot with civil society, with Amnesty International, Global Witness, the closest partners that helped me to draw up the legislation (...). I organised several events here [at the EP] and also took part in other events organised by industries, like for instance European Metal Importers Association, the automotive industry, Business Europe. I used to invite civil society members for a conversation with industries like Philips or Intel. When they organised their conferences, roundtables and lunches, they also invited me. I have had many public and private meetings both with members of civil society and with associations representing industries"⁷⁶⁰.

In summary, we understand that the initiative was taken by the Commissioner for Trade but other specific pressures also came from within the EP to legislate. Ms Judith Sargentini was undoubtedly the deputy who followed the dossier the most; organised conferences, meetings and directly encouraged the creation of the regulation.

According to our experience, investigations into the EC are more difficult than in the EP. It is not easy to understand which official is working on the dossier, and getting in touch with them can also be difficult. We understood that several actors, starting from the office of the Commissioner for trade, worked for the regulation.

⁷⁵⁹ Interview with SARGENTINI J. 7/2/2019.

⁷⁶⁰ *Ibidem*.

"We must also consider that the actors who work on a file within the EC are many. You should know that the officials who work in these offices change often, so we pass the work on the same file, to several different people who represent the same office or service"⁷⁶¹.

In order to understand which actors have worked the most with the EC during the approval process of the regulation, we have divided these actors into two groups: internal and external actors. Among internal actors, several DGs of the EC have been charged by the Commissioner to study or develop part of the file: "the draft legislation went through several consultations and an impact assessment" an officer inside DG Trade⁷⁶² told us, who wished to remain anonymous. In the case of the Conflict Minerals Regulation, DG Trade was the lead agency of the EC but other delegations have participated in the construction of the project. Among the offices with which the Trade Commissioner has worked the most, those of DG Growth, DEVCO, DG Environment and DG Markt stand out. These offices have been informed and solicited in order to express their opinions on the legislative initiative⁷⁶³. Indeed, the role of the EEAS was reported as being among the most influential internal actors:

"EEAS have accompanied the whole process. We have had the support of the EEAS in particular with regard to identification of the conflict affected and high risk areas. Together with EEAS, we have established a working group with the MSs, specifically dedicated to understanding how we could inform companies about conflict affected and high risk areas"⁷⁶⁴.

The leading role of the EEAS in the EU legislative process has also been confirmed to us on several occasions by the actors of the NGOs we interviewed.

"[EEAS] has a political role. In fact, the legislative initiative will have an impact on the diplomatic and economic relations of third countries. From the beginning, the EC has opted for a legislation with a global geographic approach [unlike Dodd-Frank], because we did not want to target only one country or one region of the world. You should know that there are conflict minerals in Latin America, Asia, etc. So the EEAS has evaluated this dimension. I also think it has a capacity of knowledge in the field, as they have embassies all over the world. Therefore the EEAS experts are consulted and they give their opinions [to the EC and the Council]"⁷⁶⁵.

"Within EEAS it is necessary to consider the regional offices. These EC

⁷⁶¹ Interview with CIOFFO G. 27/2/2019.

⁷⁶² ANONYMOUS interview 8/3/2019.

⁷⁶³ *Ibidem*.

⁷⁶⁴ *Ibidem*.

⁷⁶⁵ Interview with TRIEST F. 6/3/2019.

offices have worked with Brussels from Burundi, from Rwanda, from the DRC. They share information with the various offices of the EC, express their opinion on a bill, report critical points and strengths"⁷⁶⁶.

As we have seen above, external actors are also consulted by the DG which is in charge of writing the draft form of the regulation. Some of these actors are public, some others are private.

"Our approach is multi-stakeholder. We officials of DG Trade have been interacting with an uncountable number of organisations. We had several consultations and strongly cooperated with the OECD, both in France and in some African countries. We went to every single conference OECD organised, especially the annual meeting of the OECD in Paris. I have been at the equivalent of the OECD multi-stakeholders conference in the African Great Lakes region, in Kigali (Rwanda), in the DRC, in Kampala (Uganda). We have had several contacts with outside actors and stakeholders including companies, NGOs, IOs like UN. For example we collaborated strongly with NGOs and federations of NGOs, like CJP, Amnesty International, Global Witness. We have had discussions with companies, in particular automobile companies, aerospace companies, etc. Part of our work was also guided from academics and think tanks. We have also had meetings with national governments, in particular in smelter countries like China, Malaysia, India, Thailand and also with the smelters in these countries. Most of the effort has been directed towards receiving inputs from all the stakeholders. We have also considered two impact assessment carried out by independent consultants. And we have had at least two public consultations"⁷⁶⁷.

From this interview we understand how many actors are involved in the formation of a regulation. We also understand how the OECD, which had initially proposed the due diligence process for conflict minerals, has been a major player for this regulation. However, it is difficult to quantify the importance that DG Trade has given to each of the stakeholders consulted. We do not know which actors have been more influential on the EC. In this regard there is a criticism made by an NGO that we interviewed that concerns independent consultants.

"EC officials also work with experts. They have private meetings with experts from MSs, or with private consultants, people who may also work with or for private companies. I have the impression that they are the guarantors of the private sector and I think that they listen hardest to the needs of the companies"⁷⁶⁸.

The analysed literature shows how the use of experts or, more generally, how knowledge is used

⁷⁶⁶ Interview with CIOFFO G. 27/2/2019.

⁷⁶⁷ ANONYMOUS interview 8/3/2019.

⁷⁶⁸ Interview with CIOFFO G. 27/2/2019.

within the policy process. Some indeed argue that in certain cases the use of "knowledge is frequently symbolic. Policymakers in highly technical areas may be keen to demonstrate they are drawing on expert knowledge but this does not guarantee they are using it to adjust policy"⁷⁶⁹. The use of experts would therefore be a way for the institution to legitimise itself and make the process of approving the law seemingly more impartial. The use of experts can, therefore sometimes be ambiguous. Let us keep in mind that experts could be used as a way to keep other, perhaps more critical actors away.

The draft, by this stage, has been successively sent to the Council of the EU, the legislative power that represent the governments of the MSs. During the process of dialogue among the big three, the trilogue, the Council and the EP can change the draft of the EC and will have the last word before the final approval of the law.

"We work as an intermediary between the EP and the Council. And we take into account the positions of various stakeholders. But also in the EP and in the Council the balance between all positions is decided, not only within the EC. [Even in the case of this regulation] all positions were important and were considered"⁷⁷⁰.

We therefore understood that to write this regulation, the EC used a multi-stakeholder approach, which included many actors, both internal and external; public and private. In addition to the opinions of individual actors, the EC also made use of consultancy and research contracts. The draft regulation is then submitted to the trilogue procedure with the EP and the Council. These two organs are in turn influenced by a large number of actors. After all these consultations they write the final draft. We therefore take note that the demands made by NGOs cross with those of another large number of equally legitimate actors that the institutions must consider.

We conclude this part by presenting below a summary semi-exhaustive table which shows the main actors who played a role in the specific case study decision-making process.

⁷⁶⁹ BOSWELL C. *The political uses of expert knowledge: Immigration policy and social research*, Cambridge University Press, 2009, p.235.

⁷⁷⁰ ANONYMOUS interview 8/3/2019.

Table 7. The main actors who contributed directly or indirectly to the process of approval of EU Regulation 2017/821 of the EP and the Council.

Legislator	Interest groups that worked alongside the legislator	NGOs who worked near by the mining areas and with international NGOs
Commissionaire Karel De Gucht DG Trade 10/2/2010 - 31/10/2014 Brussels, Belgium	Global Witness Brussels, Belgium	Observatoire gouvernance et paix (OGP) Bukavu, DRC
Commissaire Cecilia Malmström DG Commerce 1/11/2014 - 2019 Brussels, Belgium	EurAc Brussels, Belgium	Save Act Mines Goma, DRC
EU Council Brussels, Belgium and MS	Commission Justice et Paix (CJP) Belgique Francophone Brussels, Belgium	Commission Diocésaine Justice et Paix (CDJP) Natural Resources Observatory Bukavu, DRC
European External Action Service (EEAS) Brussels, Belgium and its regional offices : DRC, Uganda, Rwanda, Burundi	Amnesty International Brussels, Belgium	Bureau d'Etudes Scientifiques et Techniques (BEST), Bukavu, DRC
DG International Cooperation and Development (DEVCO) Brussels, Belgium	International Cooperation for Development and Solidarity (CIDSE) Brussels, Belgium	Max Impact Bukavu, DRC
DG Internal Market, Industry, Entrepreneurship and SMEs (GROW) Brussels, Belgium	We Social Movement (WSM) Brussels, Belgium	Association pour le développement des initiatives paysannes (ASSODIP), Goma, DRC
Judith Sargentini MEP Greens–European Free Alliance rapporteur on conflict minerals Brussels, Belgium Strasbourg, France	Jesuit European Social Centre (JESC) Brussels, Belgium	Centre de Recherche sur l'Environnement, la Démocratie et les droits de l'Homme (CREDDHO), Goma, DRC
Maria Arena MEP Progressive Alliance of Socialists and Democrats INTA commission Brussels, Belgium Strasbourg, France	Réseau Belge Ressources Naturelles (BNNR-RBRN) Brussels, Belgium	Réseau pour la Conservation et la Réhabilitation des Ecosystèmes Forestiers (Réseau CREFF) Goma, DRC
Louis Michel MEP Alliance of Liberals and Democrats for Europe group Brussels, Belgium Strasbourg, France	National Centre for Development Cooperation (CNCD-11.11.11) Brussels, Belgium	Réseau d'Innovation Organisationnelle (RIO) Bukavu, DRC
EP Committee on Development (DEVE) Brussels, Belgium	Broederlijk Delen Brussels, Belgium	L'Observatoire de la Société Civile pour les Minerais de Paix (OSMP) Goma, DRC
EP Committee on International Trade Brussels, Belgium	Germanwatch Bonn, Germany	South Kivu civil society (ACADHOSHA) Bukavu, DRC
Organisation for Economic Cooperation and Development (OECD) Paris, France	Enough project Washington, USA	Comité provincial suivi activités minières Sud Kivu (CPS) Bukavu, DRC
	European non-ferrous metals association, Eurometaux	Centre de Recherches et d'Etudes Stratégiques en Afrique Centrale

	Brussels, Belgium	(CRESA), Bukavu, DRC
	European Engineering Industries Association (Orgalime) Brussels, Belgium	Justice pour tous Bukavu, DRC
	Conflict Minerals issue group, DigitalEurope	Groupe d'appui à la traçabilité et à la transparence dans la gestion des ressources naturelles Goma, DRC
	ZVEI - German Electrical and Electronic Manufacturers' Association Frankfurt, Germany	Terre solidaire (CCFD) Paris, France
	UN group of experts	

3.4.3. The contribution of interest groups

The interest groups like NGOs, the associations representing the interests of the industry, and others, are key actors involved in many moments of the process of preparation, drafting and adoption of many EU regulations. Some interest groups are bearers of particular interests. Other interest groups, on the other hand, play a particularly important role in connecting EU institutions with citizens and sometimes act as mediators. They represent more general interests. In addition, they promote pluralism and increase democratic representation⁷⁷¹. Finding NGOs in these interest groups gives us a confirmation of their legitimacy, which is double in this case: the NGOs are first of all legitimised by their supporters and donors, since the latter grant the funds to be represented at the EU institutions; later by the institutions that establish a constant and official dialogue with them, recognising them as essential actors in political process. The involvement of interest groups in the policy approval process is an evident EU commitment to promote fair governance. This is clearly written in the Treaty of the EU: article 11 para.2 states that "the institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society"⁷⁷². The same article continues in para.3, adds that the EC "shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent"⁷⁷³.

The EU is a multi-layered system of powers; this means that organisations have the opportunity to lobby different parts of the system. As we know, lobbyists can access the EU institutions. In addition, we cannot forget that some actors can lobby at the national level, through the MSs. If an organisation is particularly large and represented both in all MS and also at the EU level, like for example Amnesty International, it will have many more opportunities to advance its demands. In

⁷⁷¹ EISING R., LEHRINGER S. *Interest groups and the European Union*, European Union Politics, 2003, pp.179-180.

⁷⁷² Treaty on EU, Eur-Lex, Access to European Union law, www.eur-lex.europa.eu.

⁷⁷³ *Ibidem*.

fact, sometimes, organisations must take into account political developments at EU level as well as at national level and must be present at both levels if they wish to see their interests well represented. In cases where the laws are more copious, only those that interact on several levels will be able to pursue more effective strategies⁷⁷⁴. It should therefore also be emphasised that large organisations will often be better represented. And this can also be considered a democratic deficit, as rich and powerful organisations, who are not necessarily more representative of the general interest, have more strength to advance their positions than others; smaller organisations that are no less legitimate.

Since the 1990s, the EU has gradually regulated interest groups to pursue various objectives, such as: promoting social dialogue; reducing the democratic deficit, enhancing legitimacy, raising more contributions, improving transparency and accountability⁷⁷⁵. Various interest group regulations have been produced by both the EC and the EP, such as: the EP interest group registers or the EC codes of conduct. Since 2005, however, as part of the European Transparency Initiative, it has been decided to regulate lobbies equally for both the EP and the EC. The transparency register was subsequently created. The register is a database of organisations seeking to influence EU policies, as well as their budgets and the interests they defend. In its commitment to a transparent policy, the EC publishes meetings held by its officials (commissioners, cabinet members, directors) with lobbyists⁷⁷⁶. There are three main categories of lobbyists: consulting firms and professional lawyers; business lobbyists and professional associations; NGOs and think tanks. Organisations registered with European institutions that represent interests are constantly growing. Currently, the most represented groups are business lobbyists and professional associations (3,817), followed by NGOs (2,010), then professional consulting firms and lawyers (994), then academic, research organisations and think tanks (568), and finally organisations representing regional and local institutions (356) and church and religious organisations (41)⁷⁷⁷.

We are now in a position to evaluate the role that interest groups played in the process that led to the approval of the EU Conflict Minerals Regulation through the main steps in which NGOs gave their contributions. As we will first analyse the role played by NGOs and their legitimisation strategies, we will also consider their practical contributions. Finally, we will also evaluate the main actions undertaken by the organisations representing the interests of the industry, in the case of

⁷⁷⁴ EISING R., LEHRINGER S. 2003, p.182.

⁷⁷⁵ *Ivi*, p.184.

⁷⁷⁶ EC Transparency register; www.ec.europa.eu.

⁷⁷⁷ Data updated to 16/2/2015 and according with EISING R., LEHRINGER S. 2003, p.185.

NGO partnerships.

3.4.3.1. Building up information and networks



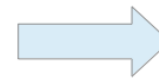
The majority of the NGOs included by this study all share the stated objective or intention to defend or promote a specific cause and to try to influence the policies and practices of IOs⁷⁷⁸. As NGOs share the use of soft power in world politics, their aim is to modify the programs and standards of national governments, as well as those of IOs and institutions⁷⁷⁹. The actions of these NGOs are aimed at influencing conflict minerals initiatives within the wider framework of human rights promotion. Some of them are more specialised in political advocacy, others in lobbying, others are working for mineral traceability programs, others are studying or provide consultancy on natural resources. As we saw previously, there are many types of NGOs within EU countries: they have several objectives and are regulated by different laws, depending on the country in which they are based. It is therefore difficult to particularise and summarise their general or specific objectives and their modes of operation. However, referring to the NGOs considered by this study, we have collated the reasons why they find themselves working on the conflict minerals issue issues. First of all, these NGOs have a strong predisposition for political advocacy and lobbying actions. They are: Amnesty International, EurAc, Global Witness and CJP. We also refer to other organisations with whom they collaborated such as: OGP, Save Act Mines, the Observatory of Natural Resources of the CDJP, BEST, Max Impact, etc. who have worked more in mining areas and not only in lobbying.

Most of the time the NGOs analysed in this thesis act individually, but during some lobbying or advocacy campaigns, they join forces to form coalitions and network in order to rationalise resources and be more effective. It must be remembered that these coalitions are made up of actors who are sometimes already a network of actors. Some NGOs have already been created, by statute, by a multitude of NGOs, sometimes registered in different countries: however they stay united at the EU level in a stable way, to work on certain questions or on certain thematic domains. As we have previously described, the case of EurAc is emblematic. We summarise how this NGO network works in the next table.

⁷⁷⁸ PETERS D. H. et al. 2009, p.312.

⁷⁷⁹ HOWELL J. 2012, p.93.

Table 8. Example of EurAc, an NGO network.

NGO		Network of NGOs		<u>EurAc</u>		CORE group
National level				EU level		

The example shown above helps us to understand how this network of NGOs is built, to function and lobby at the EU level. The network is the body par excellence that collects information, discusses it, reworks it and builds a common position to propose to the public or to the legislator. This network in particular is largely legitimate, because it brings together a considerable number of organisations from different European countries. Reading the table from left to right, we find the single NGO, at national level in the first box. This can decide to federate with other organisations to have more strength, to be more legitimate or to optimise resources (second box). Up to this point, the network can act on the national level. Then the network can decide to be visible also at EU level, so it decides to federate with other NGOs or networks of other countries (third box). This allows them to be represented in the EU institutions and consequently empower their claims. An organisation is therefore created that has the function of representing networks and individual NGOs that adhere to it. In this case, EurAc, is a network that works at EU level on a specific topic, namely central Africa. In the fourth box we find the CORE group. This was formed for a determined period to put pressure on the Conflict Minerals Regulation. It was formed by EurAc, Amnesty International, German Watch and Global Witness⁷⁸⁰.

Whether it is a coalition of NGOs established under a statute by many other NGOs or a coalition, formal or informal, created only with a specific short-term goal, it is clear that in both cases, the exchange of information is natural⁷⁸¹. We are witnessing an exchange of information that builds little by little the knowledge of the NGOs group, which is refined to a position to defend before the legislator. This way of acting is more economical in terms of human and financial resources, but it also requires more time. If, on the other hand, an NGO acts individually, it is itself who must do the work of searching for information. In this case, the NGO must take steps to carry out in-depth research on a certain topic, using additional staff or, for example, engaging external researchers. This way of working costs more in human and financial resources.

To return to the regulation analysed, in the CORE group, "the NGO Global Witness has been in

⁷⁸⁰ Interview with CIOFFO G., 27/2/2019.

⁷⁸¹ *Ibidem*.

charge of the legal analysis. In fact, the NGO Global Witness has legal experts to study the different cases"⁷⁸². This demonstrates its superior financial capabilities, but also the evidence of NGO collaboration and information exchange in these kinds of informal working groups⁷⁸³. In addition, Global Witness carried out extensive field research, thanks to the ability to hire local researchers. Amnesty International also worked on the legal part of the text of the law and mobilised many activists in the MSs, utilising its branched structure and numerous supporters. EurAc worked hard to find information through members of its network. All these organisations carried out joint-work with MEPs and have pressured EC officials.

Let us now turn to the story and the reasons why these NGOs came to find themselves working together to build a discursive strategy to try to influence the Conflict Minerals Regulation. We have identified four main possibilities describing the choice of the topic on which an NGO, or a NGOs network, decides to work.

I) An event. A specific event or a series of random and unpredictable events affect the choice of an NGO to work on a given subject. This is the case, for example, with the outbreak of a war or a natural disaster. In our specific case, in the Great Lakes region, international attention came with the 1994 war in Rwanda, which then moved to the DRC.

II) A specific interest for a region of the world determines the choice of an NGO to work on a certain subject. This happens, for example, if a given problem is closely related to that specific geographical interest of an NGO. This is the particular case of a coalition of NGOs like EurAc, the network of civil society organisations from different European countries working on and in Central Africa⁷⁸⁴.

III) A specific interest in a subject conditions the choice of an NGO to work on a given subject. This is the case, for example, of certain NGOs working exclusively on certain subjects, whatever their location or the actors involved. This is the particular case of an NGO like Enough Project, which works to put an end to crimes against humanity, genocide, corruption and the criminal activities that feed them⁷⁸⁵.

⁷⁸² *Ibidem*.

⁷⁸³ Cf. GLOBAL WITNESS *Report and Financial Statements*, 31/12/2017, www.globalwitness.org.

⁷⁸⁴ Cf. www.eurac-network.org.

⁷⁸⁵ *Ibidem*.

IV) A call for projects, a donor or specific funds affect the choice of an NGO to work on certain topics. In this case, an NGO decides to work on certain subjects because it thinks to have the technical capacities but not the financial means, which are nevertheless made available by a third party. In Africa, for example, often the largest donors channel funds to change internal policies in a specific area, or in a country, or in a given sector. As an example of a major funder, we refer, for example, to: ECHO, USAID, GTZ, Department for International Development (DFID), French Development Agency (AFD)⁷⁸⁶.

In the case of the NGOs we analysed, the choice to work on this region came for various reasons. EurAc is a network that was originally set up, in 2003, to focus actions in Central Africa. Amnesty International specialises in human rights and due to the endless series of serious violations and violence that surround the issue of conflict minerals, it is a logical area to engage with. Global Witness works on conflict, corruption and environmental abuse and so found natural reasons to focus on the DRC. CJP, which played a role in influencing the regulation approval process, also decided to work on the issue given its propensity for issues such as justice and human rights, as well as its historical focus on the DRC. Finally, the issue of funding certainly played a role. We do not have specific data on these NGOs, but we know that following the long conflicts that began in the nineties, a great deal of funding has gone to NGOs to work in Central Africa. Probably also for this reason, they found themselves working together. The story of the Great Lakes region brought them together. One thing all these NGOs have in common is they draw their legitimisation strategies from the relationship between minerals and the human rights violations; injustice, environmental destruction and corruption that stem originally from the Rwanda war and the war for power and control of resources that have followed. In this way, the original cause for legitimacy and commonality of these NGOs is the war. Without the war, would so many NGOs be working together or even exist?

3.4.3.2. The establishment of a common position

As described in the previous paragraph, to achieve their goals; networks, associations or coalitions, single NGOs can act in different ways. Some of them have specific organisational structures and decision-making processes to achieve their results; others join coalitions or policy networks to

⁷⁸⁶ Cf. CAUPIN V., GRAVELLINI J-M., PÉRIOU C. *L'action des bailleurs de fonds pour soutenir le développement financier en Afrique: le cas de l'Agence française de développement*, Revue d'économie financière, 2014, pp.177-192.

successfully carry out their advocacy⁷⁸⁷. Coalitions and networks are useful moreover for streamlining resources. In fact, small organisations may not have the physical and financial capacity to plan decisive and widely-disseminated action. In other cases, small, single organisations would have no chance of succeeding, when they compete with large interest and power groups. This leads us to ask how and why a network is built in order to exercise common action. Furthermore, how does the network manage to finalise a common position? In the specific case of the EU Conflict Minerals Regulation, we have identified three ways by which a relationship aimed at combining their lobbying strength has been established between NGOs. In each case, NGOs have worked together to build a common position, which is in turn more powerful because a common position demonstrates unanimity. With this stage reached, NGOs submitted their positions to the legislator⁷⁸⁸.

Primo, a group of NGOs specialised in political lobbying, especially towards the EU institutions. These NGOs are used to working together, perhaps daily, in the same environment, in the same city and are familiar with each other's work and specialities. Faced with the need to deal with a new common subject, they came together and created an informal network. The relationship that they developed is collaborative, constructive, and these organisations enjoyed mutual trust. With the progress of the work and thanks to the mediation between the parties, they have managed to build a common position. They have submitted to the legislator a common position supported by all these NGOs together, or sometimes they have individually shared their position to the legislator. As an example, we refer here to the CORE group (Global Witness, Amnesty International, German Watch, EurAc). A group attendee confirmed to us "that there was a mutual trust relationship between these organisations and full collaboration"⁷⁸⁹.

Secundo, a collaboration already existed between a group of NGOs or associations; this cooperation was clearly formalised according to a charter or similar agreements. This kind of union can also have international characteristics. At the practical level, this group of associations or NGOs have delegated the work of political pressure to a single organisation of the group, which has taken the role of coordinator, "the leadership for a certain campaign or other common works"⁷⁹⁰. This latter was supported in their work by all the others, who normally do not participate actively in the

⁷⁸⁷ REID E. 2000, p.2.

⁷⁸⁸ For example: EURAC, GLOBAL WITNESS, AMNESTY INTERNATIONAL, CJP, et. al. *Garantir la bonne mise en œuvre du Règlement de l'UE sur l'approvisionnement responsable en minerais provenant de zones de conflit ou à haut risque*, Note de politique commune, 24/4/2019, pp.1-8.

⁷⁸⁹ Interview with MEYER N. 10/10/2017.

⁷⁹⁰ *Ibidem*.

construction of the common position. For practical reasons, this coalition may be expanded depending on the case, including to members who do not normally belong to it.

We refer here, as an example, to the case of the organisation CJP. It has privileged relations with the organisations of the Catholic Church and especially the CDJP in the DRC. In Central Africa, and especially in the DRC, the network of the Episcopal Church is very important because of its large and growing base⁷⁹¹. We observed the importance of this network during last political elections in the DRC, in December 2018. Here in fact, the Catholic Church has the largest network of electoral observers in the country. During last political elections, its 40,000 observers were deployed throughout the country and published 12,300 reports that stated on the voting process in 56.52% of the country's polling stations⁷⁹². The CDJP have contacts in all the villages and in all the cities where organisations of CDJP or a Natural Resources Observatory exist. This type of organisation has contributed substantially to building a common position, thanks to the reliable and extensive information from the field, which was then shared with the partners in the lobby at EU level..

Tertio, some NGO have worked singularly or less occasionally have only requested support, legal advice, technical advice, consultancy to third parties who are not part of the organisation. It is the NGO itself that has created the position it deems most appropriate to lobby the legislator. These third parties can be actors of any kind, but usually they are colleagues or other NGOs. We take the CJP case as an example. Mr Ficher, in charge of the advocacy, during the interview recorded for this thesis, told us that they used to complete the information through contacts with Global Witness and Amnesty International. This is because the CJP did not have teams of researchers in the field and they could not pay for it. On the other hand, Global Witness constantly had teams of researchers in the field, because they could afford it. This possibility allows this type of large NGO to build their own position to propose to the legislator, or on some occasions, to a provisional coalition of organisations. Even Global Witness can afford to build its own discourse by itself, because it can afford it as it has mobilised important research facilities and a legal team. According to Mr Ficher, in order to secure its aims, CJP is able to mobilise politicians more efficiently through the use of personal contacts. Therefore, if an NGO like Global Witness has certain strengths such as the ability to conduct deeper research or the support of a legal team, etc, an NGO like CJP can use its strength to mobilise personal contacts to reach their goals. This is a generalisation as every

⁷⁹¹ Interview with FICHER S. 28/2/2019.

⁷⁹² SARR L. *RD-Congo, l'Église catholique en première ligne dans le suivi du processus électoral*, La Croix, 2/1/2019.

NGO working with the European legislator can count on personal contacts or legal advice from taking advantage of possibilities from carrying out research on a certain topic. However, there are differences that derive substantially from the experience of the NGO working on a certain topic; from their economic capacity, from their age and from other factors, as specified throughout this thesis.

However, in our specific case, when they had to analyse the legal texts, it became more the role of Amnesty International and Global Witness. The strength of CJP was then to turn legal speeches into political demands for Belgian audiences⁷⁹³. Amnesty International has also confirmed this way of working. Ms Meyer told us that:

"the research for information, that argues the political position of this NGO consortium, takes place in various ways. Not all organisations can search for specific information or can finance research activities. Some of the organisations inside the consortium, however, could made specific studies, relying on other partnerships"⁷⁹⁴.

This third possibility to establish a common position, however, makes us understand that an NGO cannot work totally alone. If they want to be effective in the construction of a discourse, they must deal with other organisations.

In summary, to try to influence this regulation, the NGOs analysed have acted in three ways: I) working within a network to lobby stably on various issues; II) working within a coalition that was created specifically to work on conflict minerals; III) working independently. We continue this analysis and try to understand how the NGOs, having developed a common position, tried to get it passed by the legislator.

3.4.3.3. NGO methods to put pressure on EU institutions

Whether it is a single NGO, a temporary coalition, or a NGO network, they interact with the legislator to express their position several times. It is important to remember that since the legislative process lasts a few years, the position of the various actors is likely to change. And of course, this position will be taken into account by the legislator as well as the position of many other actors. By simplifying the various steps, we can summarise that NGOs can act: I) on the EU

⁷⁹³ Interview with FICHER S. 28/2/2019.

⁷⁹⁴ Interview with MEYER N. 10/10/2017.

Council, through their respective national governments; II) on the EP, through MEPs; III) on the EC, through the officials of the different DGs.

I) Pressure on the EU Council: some NGOs have pre-existing relations with members of their own government or parliament. In particular, it may happen that members of some NGOs have already had the opportunity to work with them. A relationship has already been established in the past. It is therefore relatively easy for an NGO to contact a member of parliament, the national government or a minister, to ask them to put pressure on the individual in charge and who can, in turn, put pressure on the EU Council. This type of pressure is usually of a rather informal nature. For example, it is done by phone calls, e-mails, statements. Furthermore, actors who want to apply pressure could send a part of a text or an amendment, knowing that it will reach the legislator. Sometimes interested politicians can participate in events that deal with an issue or even become the spokesperson. Take for example this statement made by a member of an NGO, who wished to remain anonymous, during discussions on the draft law of the regulation.

"Federal parliamentarians were readily available with us. We contacted them several times to propose a national resolution, to be presented at the Council, for an ambitious European regulation. We worked with CDH e PS⁷⁹⁵ on the resolution, but finally the approved text was pretty much weaker. This resolution was forwarded to the Ministry of Foreign Affairs, which then sent the file to the EU Council"⁷⁹⁶.

II) Pressure on MEPs: European deputies are generally the most open to the most divergent points of view and they are used to maintain contacts with various stakeholders or interest groups. MEPs obviously take into account their personal political positions, their experience, those of their own political parties and political groups, as well as the interests of their home countries and, of course, of their constituents. Sometimes it also happens that the MEPs experience pressure amongst themselves, individually or through their parliamentary groups of reference. For a key insight, let us hear once again Ms Judith Sargentini, who started the ball rolling on the EU regulation. She told to us:

"Before entering the EU parliament, I was working for a development NGO focusing on oil, diamonds and conflicts so I spent a lot of time in similar issues: the resource curse, money recycled to buy weapons and fuel war, etc. In 2009, I became an MEP, so when in 2010 there was the US initiative, the Dodd-Frank, I decided to start pushing here for similar

⁷⁹⁵ Belgian political parties.

⁷⁹⁶ ANONYMOUS interview with a member of an NGO, Brussels, February 2019.

legislation. I was the first MEP to take the initiative and push in order to legislate. I tried to create an atmosphere in which it was logical to cope with the legislation. From 2010, every time there was a debate about the Congo, or with conflict minerals as the topic, I presented questions and organised debates... and I went to talk with the EC, the DG DEVCO, the DG trade, etc. Officially the EC started to discuss the legislation proposal and after a couple of years pushing, the commissioner for trade, Karel De Gucht, the Flemish liberal, came up with the initiative in 2014"⁷⁹⁷.

Meetings between NGOs and MEPs can be both formal and informal. Meetings are held in public at conferences or organised by parliamentarians or NGOs. They can also be held in private, when NGOs meet with MEPs to discuss certain topics or work together on certain issues. In this case too, it is possible for NGOs to intervene directly in the work of MEPs, for example by proposing amendments or even part of their public speeches. MEP Ms Sargentini confirmed that she has worked a lot with NGOs for the EU regulation, especially with Amnesty International and Global Witness, the most influential actors who share the work of this deputy⁷⁹⁸. This is yet another demonstration of the legitimacy enjoyed by NGOs with representatives in institutions, in this case the EP.

Eventually, NGOs can put pressure on MEPs indirectly: they can organise campaigns in which they ask their members to write or call MEPs and submit a specific request, sometimes already prepared by the NGOs themselves. As an example we mention the advocacy campaign 'Tell EU leaders to stop conflict minerals' which was disseminated by NGOs throughout Europe. This internet based campaign urged online users who were sensitive to the problem to send a message to MEPs. The requests made to the MEPs made a proposal aiming to ensure responsible sourcing of minerals by businesses⁷⁹⁹.

III) Pressure on the EC: the EC organises hearings several times throughout any process to meet stakeholders and to have their opinion on a law that it wants to adopt. This occurs both before the formal proposal of a law and also during the approval process, prior to its publication. NGOs can invite officials to their events and attend meetings organised by the EC for stakeholders. During these occasions, it is possible to put pressure on EC officials who are responsible for a certain file. It is very unlikely that NGOs can meet the Commissioner personally. However, in many occasions there are informational meetings that take place between EC officials working on the file and

⁷⁹⁷ Interview with SARGENTINI J. 7/2/2019.

⁷⁹⁸ *Ibidem*.

⁷⁹⁹ Cf. www.cidse.org.

various interests groups, included NGOs.

Finally, to better position their idea; to gain legitimization, to gather information or expand their networks, NGOs organise missions in strategic locations for the development of the legislative process in their favour. These missions may also involve legislators, for example MEPs, who may be accompanied by NGOs members in an assessment of the situation on the ground. In this kind of business trip organised by NGOs, the legislator can meet members of the CSOs who collaborate with the NGOs members of its same network. On the other hand, NGOs can also organise missions for members of civil society, in cities where a certain law is discussed and built, in particular Brussels, in the case of a European regulation. In our specific case, in addition to the meeting in Brussels to meet the MEPs, members of Congolese CSOs have been also invited to the OECD forums in Paris. And on some occasions, NGOs can take advantage of known major personalities in order to influence the legislator or even increase their knowledge of a certain subject. As we underlined previously, NGOs have used this discursive strategy in the case of the invitation of Mr Denis Mukwege at the EP or when they sent the letter signed by the Congolese bishops to the MEPs.

So far, we have analysed the methods used by NGOs to put pressure on the EU institutions. In general, NGOs try to assert their positions by organising meetings and events to which government members at all levels (national and European), MEPs and committee leaders are invited. NGOs are also often compared to members of industry associations where many meetings are also held privately or informally.

3.4.3.4. Multi-stakeholder partnership: industries and NGOs act together

During lobbying activities NGOs, like other private actors, may decide to act individually, or join other actors. Much depends on the interests at stake, on different moments of the legislative procedure or on how the different political positions can coagulate in certain periods. On the other hand, it may happen that in other periods there are no interests to share or instances for which to fight together and therefore the actors act alone. As we have seen previously, there are some networks between NGOs that, by statute, last over time, such as EurAc; in other moments, temporary coalitions are created to achieve a certain goal, for example the CORE group, after which they dissolve. In this paragraph we want to report the example of a large and enduring coalition composed of governments, NGOs, industry representatives, research centres, governmental and

IOs, technically known as multi-stakeholder partnerships. Our example is called EPRM, a large public-private partnership that has been legitimised from the EU institutions and other governments with substantial funding. In fact, as mentioned previously, among the accompanying measures of the regulation, funds were specifically allocated for this partnership. In order to better understand this type of public-private partnership, we also discussed EPRM with Mr Lageard who is a leading player in this particular coalition.

"We are part of the EPRM partnership that was funded by DEVCO with € 5,4 million. This is done to improve the supply of responsible minerals, for tin, tungsten, tantalum and gold. We also take care of lithium, mica, cobalt. And not only for minerals from conflict areas... In fact there are also many other social violations, for example the exploitation of workers and even situations of slavery. We also want to intervene in situations of environmental abuse, for example to combat the use of mercury for the extraction of gold"⁸⁰⁰.

The partnership was born under the impulse of the industries that worried about their image. In the period during which NGOs started to talk about conflict minerals, all the big companies were acquiring corporate responsibility codes.

"The subject started to become relevant twelve years ago more or less. The global technology industry is one of the most powerful in the minerals sector. Our former boss, responsible for global factories, when he heard about it, decided to do something. (...) A long time ago there had been Nike's scandal in the fashion industry. So because of that, companies like Intel have developed corporate responsibility programs, in order to avoid similar scandals"⁸⁰¹.

They also had to worry about supporting the supply chain. The minerals that caused the conflict are fundamental to the production process of these companies, so they estimate what is necessary to ensure that the supply chain is never interrupted.

"The reason why Intel has worked hard on this issue is as follows. There are four minerals, which are well used in our business. We have a part of Intel that deals with the management of the supply chain and has decided to turn towards the level of sustainable development"⁸⁰².

For these reasons, the industries, in addition to developing their own codes of conduct, have also

⁸⁰⁰ Interview with LAGEARD J. Public Policy Senior Manager in Europe, Middle East and Africa for Intel Corporation, Member of DigitalEurope and American Chamber Congress to the EU, 25/2/2019.

⁸⁰¹ *Ibidem*.

⁸⁰² *Ibidem*.

decided to improve alliances with other actors. The partnership was officially born in 2016 and is based on collaboration between government agencies and institutions, the supply chain actors and the CSOs. These three pillars of the organisation are represented by different organisms, both public and private. Chairs rotated regularly, in such a way that all the adherent members can take place in the direction of EPRM, depending on their role.

"I still think that we have to recognise that the balance of power is fairly balanced. They have three pillars: governments, private companies and NGOs. Each of them has three votes in the board of directors"⁸⁰³.

Public actors include the Dutch Ministry of Foreign Affairs, the UK Foreign & Commonwealth Office and the German Federal Ministry of Cooperation and Development. According to one of our interviews:

"The goal of having other governments in the partnership is to have more legitimacy. The objective is not to have their economic contribution. Rather, as in the case of Finland, we also want their collaboration for their expertise and knowledge."⁸⁰⁴.

Private sector actors include giants of the technological sector, such as: the Conflict-Free Sourcing Initiative (RMI)⁸⁰⁵, Intel, Apple, Hewlett-Packard, Samsung, Fairphone, International Tin Association, TIC, Philips and Valcambi. The civil society actors involved are: the The International Peace Information Service (IPIS) and some NGOs such as Cordaid Holland, Diakonia Sweden, ARM, Solidaridad International. Observer members include the OECD, the UN Environment and one of the main financiers, DEVCO. The partnership also includes RVO and the Netherlands Enterprise Agency, which manages the secretariat in The Hague. The objectives of the partnership are many. There is of course a need for reliable research and information exchange between the various partners. This work is mainly carried out by research institutions and NGOs.

"We work closely with NGOs in the framework of the EPRM partnership, such as Save Act Mine, Diakonia, Solidarity, Cordaid. Thanks to them we have reliable information, where we work in principle of trust and transparency. We also have a global knowledge partnership, an academic network that includes Universities, based in Venice, called Global Campus for Human Rights"⁸⁰⁶.

⁸⁰³ Interview with CIOFFO G. 27/2/2019.

⁸⁰⁴ Interview with LAGEARD J. 25/2/2019.

⁸⁰⁵ RMI is an association for corporate responsibility, which also deals with sustainable development. They manage an initiative called Drive Sustainability.

⁸⁰⁶ Interview with LAGEARD J. 25/2/2019.

Another function of EPRM is to explain and simplify the procedures for transparency and responsible supply chain delivery to SMEs:

"The partnership was also made to help SMEs, who often do not have the time to take care of drafting reports for Due Diligence. Partnerships can help them to meet these obligations and can also improve knowledge of the OECD regulation for partner companies"⁸⁰⁷.

EPRM promotes numerous projects around the world. The countries involved are Colombia, Uganda, Zimbabwe, Kenya, Indonesia, the DRC and so on. The partners reflect the composition of the members that make up EPRM, i.e. we find companies, research centres, associations, members of civil society and governments. These projects often concern the promotion of a responsible supply chain, support for communities living in mining areas, traders and processing companies. Other stated goals are to provide credit for the development of local businesses, promoting gender equality and supporting initiatives for the emancipation of women, improving workers' conditions, disseminating information, facilitating trade in conflict-free resources⁸⁰⁸.

"We have a partnership with a lot of players and therefore a lot of possibilities. The partnership also includes social investors, banks, financial institutions, traders. Thanks to them, we finance projects through calls for tenders in several countries, such as Uganda, Rwanda, Colombia. Our partners work for example in regions at high risk of conflict, with disadvantaged people, women, for access to credit"⁸⁰⁹.

There is no lack of criticism of this type of partnership. Some NGOs think that the companies involved are too powerful to guarantee an effective balance of power and real transparency, focussing instead on protecting business. Some NGOs even refuse to engage in any dialogue with this type of multi-stakeholder.

"We are a bit sceptical about this type of coalition, because there are huge companies that are in any case oriented for the business. Some NGOs, like CIDSE, have even decided not to talk to EPRM because they think it is an initiative whose industries have too much power"⁸¹⁰.

However, in the opinion of industry associations, this type of grouping of small and large companies should favour compliance with the regulation, even for parts that are not mandatory but

⁸⁰⁷ *Ibidem*.

⁸⁰⁸ Cf. EPRM; www.europeanpartnership-responsibleminerals.eu.

⁸⁰⁹ Interview with LAGEARD J. 25/2/2019.

⁸¹⁰ Interview with CIOFFO G. 27/2/2019.

voluntary. This would also be due to an alleged control by NGOs and MEPs and also because small companies would have more knowledge of the regulation.

"Even for voluntary obligations, it is the case that some NGOs or some MEPs will be interested and continue to investigate the behaviour of certain companies. This means that companies that are not required to comply with the regulation may adapt over time. Partnership can also improve knowledge of the OECD regulations for partner companies"⁸¹¹.

However, others strongly criticise this position.

"The regulation states that companies have individual responsibility for their due diligence. However, the regulation also says, and for that point we NGOs have failed during the negotiations, that companies can also become members of industry skills whose members implement the due diligence at collective level. In practice this means that a company that is part of an industry skills recognised by the EC, practices the duty of diligence and therefore respects the regulations. But compared to some reports, including Global Witness, which studies the implementation of due diligence by individual companies, we see that these companies do not fully respect the methodology of the OECD. In fact the control of these industry skills on their members is quite weak. Some companies simply sent their reports to the industry skills which they accepted without doing many checks. So the risk now is that the EC act, does not detail enough how to control the industry skills"⁸¹².

In conclusion, there is no recognised objectivity in this type of partnership, or signals that make us believe that they are more legitimate than NGOs that act alone. The only significant signal that confers legitimacy on this partnership is the important funding obtained from the EC to implement the projects. However, this is not enough to consider the partnership as totally effective and legitimate. In fact, it is normal that since they represent an important number of actors, including government agencies and important multinationals, they are able to attract funding from the institutions.

3.4.3.5. NGOs alone vs NGOs in partnership

Should NGOs act in partnership with industry associations or choose to work alone in order to develop a more effective legitimisation strategy to be able to lobby for acceptance of a norm, influence new standards and values or a paradigm shift? Should NGOs be incentivised to form a

⁸¹¹ Interview with LAGEARD J. 25/2/2019.

⁸¹² Interview with CIOFFO G. 27/2/2019.

partnership? For answering this question we should factor in: I) NGOs which act mainly alone and sometimes cooperate in groups for a certain period of time, or for a specific instance; II) NGOs which act in a stable network and sometimes cooperate in groups for a certain period of time, or for a specific instance; III) NGOs which are used to act in a partnership like EPRM.

In the first case we refer to the larger NGOs which have played a role in influencing the regulation, namely Amnesty International and Global Witness. As we learned from our interviews, these NGOs are not used to working in a stable network with other organisations. There are probably many reasons for their preferred way of working, including strategy, image, professionalism, objectives or financial possibilities. We have gathered from interviews and investigating through websites and publications, that the uniqueness of their organisation also plays a role. These NGOs are enormously known at global level. They have developed a high level of legitimacy through their strategies over many years. For example Amnesty International was founded in 1961, has more than seven million supporters around the world and works practically in every country in the world⁸¹³. In more than fifty years of campaigning for human rights, Amnesty has achieved the change of a great number of norms and standards. It has been able to change the behaviour of governments' thanks to its objectivity and its principles⁸¹⁴. At EU level, its lobbying can count on a large staff of professionals with long experience behind them. In fact, around eighteen employees work in the Brussels office, with decades of work experience before joining the organisation team and with high-level profiles⁸¹⁵. The legitimacy acquired also comes from the possibility of finding Amnesty in each conference room where the presence of an NGO is allowed, of using the consultative status at the UN, of disseminating reports, statements of position, advice, taking a position. Furthermore, as confirmed in this thesis, the organisation is well accepted by some legislators in the process of approving a law, thus having the possibility of expressing its position by influencing international and national legal instruments⁸¹⁶. Another probable reason that may push this type of NGO to work independently in most of their projects is their budget. In fact, as we have seen, this type of organisation is able to afford a team of people working on specific issues. This is, on the contrary, is one of the reasons why small NGOs join forces and finance and collaborate on certain dossiers. In 2017, the global financial report shows that Amnesty International received donations of around € 290 million. About half of this budget was spent on advocacy, raising awareness, campaigning,

⁸¹³ Cf. www.amnesty.org.

⁸¹⁴ CLARK A. M. *Diplomacy of conscience: Amnesty International and changing human rights norms*, Princeton University Press, 2010, pp.21-36.

⁸¹⁵ Cf. www.amnesty.eu

⁸¹⁶ CLARK A. M. 2010, pp.124-142.

education and human rights research⁸¹⁷.

The profile of the organisation Global Witness is somewhat similar to that of Amnesty International, although its history is much shorter. In fact, the NGO was established in 1993 with the specificity of dealing with conflicts, poverty, corruption and human rights abuses linked to the exploitation of natural resources. Even in this case, it can be said that this type of NGO does not need to work alongside other organisations on a lasting basis. In particular, as we found out during our field research, this NGO has the opportunity to employ a large number of researchers for its investigations. In fact Global Witness, in order to carry out its inquiries, often does not need to work with other local NGOs, such as EurAc or CJP. As their "contact with local organisations is also patchy", to develop research, the NGO directly hires a team of local researchers in order to gather information on behalf of a specially formed research team⁸¹⁸. In addition to teams in various countries, Global Witness can count on a series of fixed consultants on various issues, experts that the NGO can consult at any time and who can carry out research or study cases⁸¹⁹. It is also for this reason that the results of their research are often used also by other NGOs, because they are considered reliable, almost infallible. Unfortunately, we should affirm that we draw these conclusions on the work of Global Witness based on what some NGOs reported to us in the DRC and in Brussels⁸²⁰. In addition to this we have collated other information from their reports, policy notes and their website. We are sad to say that consulting their website was the only recommendation given to us by their Policy and Advocacy officer. In fact, as already reported in the "Limits to Interviews" section, Global Witness gave us no interviews, but replied, after we have sent them many emails, to "suggest looking at our website where we upload public documents (...) given the "real security risks with providing confidential information". They even "cannot provide a list of sources or partners, given the current security situation and reasons for confidentiality"⁸²¹.

Furthermore, regarding the legitimacy of reports and information of this type of large NGOs, which in fact work in a very solitary manner, there are several authoritative voices that do not give it absolute credibility. In discussions with academics, who preferred to remain anonymous, serious doubts have been raised about the legitimacy of the research of organisations such as Global Witness. One claim is that their research method is not scientific but instead based on macro objectives that the organisation wishes to perpetuate in order to justify its work and expenses.

⁸¹⁷ AMNESTY INTERNATIONAL *Global Finance Report 2017*; www.amnesty.org.

⁸¹⁸ Cf. GLOBAL WITNESS *Blog Defenders: Methodology*, 13/7/2017; www.globalwitness.org.

⁸¹⁹ Interview with CIOFFO G. 27/2/2019.

⁸²⁰ Interview with KAMATE G. 8/12/2017.

⁸²¹ Email received by the author on 6/11/2017 from the Global Witness Policy and Advocacy Expert.

Another claim is that the organisation lives on huge subsidies collected from private donors, which in a certain sense are interested by sensationalism and the visibility of the investigations⁸²². In particular, reference was made to the strong stances of this organisation contributing to the export ban of minerals, such as the Kabila embargo and other dangerous market reactions to the Dodd-Frank Act. These kinds of actions and reports from NGOs, have helped create market panic and widespread fear for dealing with minerals from the region. The consequences, as we saw in the previous chapters, were that the trade was partly interrupted, creating strong discontent among Congolese miners, as well as other actors along the chain. However, despite criticisms, the organisation has certainly acquired legitimacy and thanks to powerful means is able to influence standards and norms. This was confirmed by the interviews, both with the actors participating in the law-making process (for example the deputies Ms Maria Arena and Ms Judith Sargentini) and with the other NGOs who collaborated with them (Amnesty International, German Watch, EurAc, CREDDHO, etc.). Their visibility is very important and we found some of their brochures and reports also in Goma and Bukavu, at the headquarters of the NGOs interviewed.

The second case concerns NGOs which act in a stable network and sometimes cooperate in groups for a certain period of time, or for a specific instance. In this case we refer to NGOs as EurAc and CJP. As we have seen previously, these organisations are permanently representative of a supranational network and are regularly engaged in lobbying actions towards EU institutions. The CSOs that are part of the network are numerous, but often have limited budgets, compared to the large international NGOs analysed above. Even if their visibility is smaller than big NGOs, it could therefore be argued that their credibility, as well as their legitimacy, is based on the intense exchange of information between them. Indeed the relationships between this type of network, individual NGOs and partnerships are frequent. EurAc, for example, relies on an individual NGO in the framework of CORE group action:

"Most of the legal analysis is done by Global Witness because it has the legal experts to study the case"⁸²³.

The same NGO has declared to us that it has contacts with organisations that are part of EPRM. This confirms that they share contacts and both work with organisations that act individually and with partnerships that include NGOs and industry representatives. This is also due to the fact that certain member organisations of EurAc, are also members of EPRM.

⁸²² ANONYMOUS conversation with an academic, 2019.

⁸²³ Interview with CIOFFO G. 27/2/2019.

"EPRM maintained an inclusive approach because they invited us to join their association and other NGOs as well. We refused because we want to maintain our independence in our lobbying work. But Diakonia, IPIS and Cordaid are also members of EurAc. So if we need information, we can have it easily enough. We also participated in some EPRM tenders and we still have a dialogue with them"⁸²⁴.

Interviewing these NGOs that carry out lobbying actions on behalf of a network, that finances and supports them, we perceived the greatest determination in facing the negotiation process of the regulation. Despite the smaller budgets, compared to the large NGOs and also with respect to the EPRM partnership, lobbying was intense from the beginning of the law approval process. The legitimacy of these NGOs is demonstrated by the interviews with the legislator, for example the MEPs. Nevertheless some of these NGOs have declared that they "feel like little pawns compared to the giants of the industry and trade associations for lobby. EC officials seems much more sensible to them"⁸²⁵. Essentially, on one side MEPs listen to these NGOs, advise them and know their positions. A little further away from the NGOs, it seems that EC officials are less sensible to their requests. We also learned this during an interview with a member from an NGO who preferred to keep anonymous.

"Personally I think that EC officials, they treat us like children. They are very kind; they give us appointments, they answer our emails and letters. But what they really listen to is the private sector, the governments, the companies. They listen to us because they have to do it, but they do not take us seriously. I generalise, after all, that depends also on the interlocutor"⁸²⁶.

If these NGOs believe they have little influence on the legislator, who listens hardest to the private sector, it would be useful to analyse other NGOs that have chosen to work in partnership with governments and representatives of the industry to see their perspectives.

The third and final case analysed in this paragraph concerns NGOs that are familiar with acting in a partnership with associations of industries and government, like EPRM. We have abundantly explained the functioning of this partnership in the previous paragraph. The NGOs that are part of this initiative have not played a particular active form of lobbying directly on the EU institutions, but have relied on the consortium. This consortium is in charge of defending, before the legislator, a common position that is taken in the interest of all members, including representatives of industries,

⁸²⁴ *Ibidem*.

⁸²⁵ ANONYMOUS interview with a member of an NGO, Brussels, February 2019.

⁸²⁶ *Ibidem*.

governments and international institutions. In fact, no deputy told us that they had directly worked with these NGOs. However, it should be pointed out that some of these NGOs have carried out important research work, which has been useful, even to us, to analyse the problems of conflict minerals. IPIS reports, for example, have certainly contributed to influencing the legislator's opinion⁸²⁷. In addition, other NGOs that are part of this partnership have undoubtedly helped to raise awareness of the problem with advocacy work among their supporters. It is important to underline the commitment of these NGOs, especially Cordaid and Solidaridad, who work in many countries, that have important budgets and numerous supporters. We know about their positions thanks to their various public statements concerning conflict minerals⁸²⁸. This method of working has helped to raise awareness of their followers as well as the MEPs much closer to these NGOs.

Thanks to publications and advocacy work, these NGOs have played an active role in the partnership. The legitimacy of the partnership has certainly benefited. We must also add that surely these NGOs have entered the partnership to increase their availability of funds. In fact, as we have already said, EPRM has received important subsidies from the EC. In this way even these NGOs have been able to enjoy funds to realise their projects, some of which take place, for example, with gold miners in conflict areas. In other examples, on the Solidaridad website, we can see the numerous projects of the NGO with the communities that extract gold⁸²⁹. In conclusion, the other members of the partnership, including industry representatives associations, should also have had to take into account the positions of these NGOs. We can therefore state that working in a partnership, which also includes companies, can in some way bring the positions of investors and NGO supporters closer together.

Finally, we are unable to answer the initial question that we asked ourselves at the beginning of this paragraph. Each NGO has a different way of working. It is not possible to define a general rule that tells an NGO whether it is better to work alone, in a network or in a partnership. Each of these choices opens different possibilities, each one with a different degree of legitimacy.

⁸²⁷ Among the most important and influential publications of IPIS, we recall:
BULZOMI A. *The EU Draft Law on Conflict Minerals and Due Diligence: A Critical Assessment from a Business and Human Rights Standpoint*, IPIS, Antwerp, 2014;
MATTHYSEN K., ZARAGOZA MONTEJANO A. 2013.

⁸²⁸ CORDAID *Conflict minerals legislation is necessary*, 9/4/2015; www.cordaid.org;
SOLIDARIDAD *New European partnership for responsible minerals founded*, 12/5/2016;
www.solidaridadnetwork.org.

⁸²⁹ Cf. www.solidaridadnetwork.org.

3.5. Testing NGOs with the five legitimacy criteria

Every NGO has a different way of working which made a general analysis of their methods difficult. This is the reason why we limit our analysis to a specific group of selected NGOs which: is concerned with and engages with political influence, especially through lobbying and advocacy activities; have worked on the conflict minerals issue; used to working in a permanent network or in collaboration with other actors.

We therefore decided to test NGOs on the basis of Steffek's five criteria of legitimacy that we initially identified and set out (participation; inclusion; transparency; independence; responsiveness). As described in the previous chapter, they allow NGOs to act as 'transmission belts' in international-level governance; they could connect the global citizenship to IOs and institutions, transporting citizens' values, visions and interests into the political arena. While this is a simplified test, it also takes into account our experience in the field and the knowledge of the activities carried out by the NGOs considered in this study. It seemed appropriate to reflect on what could be the most legitimate way of working and to identify this we found that using the five general criteria of legitimacy was extremely useful.

After exploring the most common way of working, we have found that a solid, independent and long-lasting network can represent an adequate and legitimate working methodology. The importance of network dynamics was highlighted when we applied the five criteria that allow an NGO to convey a communication channel between IOs and citizens. We found that the network is the most legitimate means to pursue an NGOs capacity to function as transmission belt. In fact, according to our analysis, the network is able to respond more efficiently to the criteria that legitimise NGOs to function as transmission belts between the EU legislator and the citizens. We have applied the five criteria to the network, taking as an example the work done by EurAc and CJP from our case study.

The first criterion is that of participation. We state that there is mutual trust between the various members, who are used to working with each other and exchanging different positions which in turn build the common statement. Furthermore, the operational modality constituted by a network formed by organisations based in different countries, allows the consideration of positions according to different ethics and sensitivities. This contributes to increasing the legitimacy of the position taken and therefore of the final actor who has the task of exerting pressure on the political

legislator. The way the network works also allows for greater democracy in the decisions made. In fact, several actors within the network contribute to the construction of a position: they study a certain problem and are able to identify the solutions thanks to their different reference background and their different analysis skills.

Being long-lasting, the network is able to create a stable relationship with institutions, their representatives and officials. This modality increases mutual trust and consolidates working practices. Research has shown that there is an undeniable risk of creating an elitist relationship between the legislator and an NGO. This risk may cause a loss of legitimacy of the NGO which is against the interests of those beneficiaries it is aiming to serve. The network is actually more protected from this risk as it is comprised of several organisations, who also work in the field. In this way, they are not necessarily focused on lobbying but more on working in cooperation, development or humanitarian action. These NGOs often have a direct and daily relationship with the beneficiaries that we can define as a bottom up approach. They can therefore easily transfer specific requests to the legislator, filtered by an umbrella organisation⁸³⁰. This undoubtedly increases the legitimacy of the network compared to other lobbying and advocacy organisations, as it satisfies the inclusion criterion.

Another criterion that impacts the effectiveness and legitimacy of a network is transparency. According to our experience in the field, the NGO network we analysed was undoubtedly the most transparent and complete in providing us with the information. Citing our specific case as an example, we had the opportunity to meet many times Mr Cioffo, EurAc's Program and Policy Officer, both in Brussels and in Bukavu. At conferences and other meetings, even informal ones, we saw how Mr Cioffo dealt with managers of the NGOs working in eastern DRC. This relationship, which in certain parts we will define as intimate, has highlighted the ability to translate the demands of the base with the legislator, acting as a point of union between the two. We also observed how EurAc dealt with the legislator during round table and stakeholder meetings in Brussels. Also in this case the relationship between the actors, for example Mr Cioffo and the MEP Ms Arena, seemed absolutely collaborative and sincere. In addition to our personal experience, we have found that EurAc is extremely transparent about internal procedures of the organisation. They are clearly stated on the website, as well as the mandate, the organisational structure and the relationship with the members. On the same website reports of their activities, attending conferences and positions

⁸³⁰ WILLETTTS P. *What is a Non-Governmental Organization?*, in UNESCO (ed.) *Encyclopedia of Life Support Systems: Encyclopedia of Institutional and Infrastructural Resources*. Oxford: Eolss Publishers, 2002, pp.229-230.

taken are also displayed. The organisation also provides annual reports, where a summary statement clarifies the activities carried out. As for financial transparency, the organisation clarifies that the majority of the funds come from its members and an integral and punctual part of financing comes from external donors, especially three foundations, which are clearly identifiable. The financial situation is summarised in the annual report. According to EurAc, funding comes from various different entities, so we can say that the criterion of financial independence is also respected. In fact, the organisation does not depend on a single actor or an indispensable condition for meeting the criterion. Consequently, if an actor were to stop financing this network, the work would not be affected as other sources of funding would be available. The criterion of political independence is also satisfied. In fact, EurAc works independently of both the European government and Belgium, the country in which the organisation is legally based.

The network responds positively to the first four criteria and, therefore, the last criterion, receptivity, is also satisfied. The sum of the first four criteria allows us to affirm that the network has sufficiently considered the interests of the NGOs it represents. There is no doubt that the network is the best method to meet the needs of its members and also manages to express their requests efficiently to the legislator. This adds legitimacy to the network because it has the greatest capacity for receptivity to the vision and requests of its supporters, bringing them to the legislator.

In the following table, we have taken as an example some concrete practices, through which the networks we analysed in this study operate and we have related them with the criteria of legitimacy. Based on our interviews, the documents requested from NGOs and those available online, we have put number '1' on the practices that we have been able to verify, which the network uses in its work to bring legitimacy to its actions.

Table 9. NGOs network capacity to function as transmission belt.

Ex. EurAc, CJP	Participation	Inclusion	Organisational transparency	Financial transparency	Independence
Members inclusion	1				
Beneficiaries inclusion		1			
Surveys/studies		-			
Position papers			1		
Report of meetings			1		
Positions taken			1		
Annual report			1		
Source of financing				1	
Annual Budget				1	
Independence an economic actor					1
Independence from government					1
Total responsiveness	10				

We have shown that the network meets the participation and inclusion criteria, as explained above. We have explained how it hardly makes extensive use of field research, having reduced financial capacity compared to large INGOs and not having professional researchers in the field. Rather, collaboration with other actors, external to the network, can help the network in building legitimacy into their actions. The network makes regular use of position papers and reports of meetings, which are freely available or upon request. The positions taken are visible on the websites. The networks clarify their activities in the annual reports. In addition, their funders and annual budget are also publicly available. Finally, we have explained how their economic and political independence is guaranteed. Responsiveness, or the ability to represent the interests of its supporters, is achieved. For these reasons, the total score for the network is 10/11, the highest level of legitimacy in our case study.

Let us now compare the individual work of a single NGO in relation to the five criteria for an NGO to work as transmission belt, to convey a communication channel between IOs and citizens. In this case we refer as an example to the work done by Global Witness and Amnesty International. In constructing the discourse to try to influence the EU regulation's decision-making process, these NGOs mainly relied on their individual structures. Only on a few occasions have they reached out to other NGOs, as was the case with the informal CORE lobby group. These NGOs act mainly alone, because they have important organisational structures, with a large staff and huge financial resources. Thanks to this, they can carry out the search for information independently. They can

hire teams of professional researchers, including local ones; they can afford legal advice and expert consultation. They sometimes have their local reference offices available. In addition to material resources, these NGOs can also count on their personal brand: their name, which is well known and can represent an advantage in relations with the legislator.

However, these NGOs do not satisfy the first criterion, participation. Their members are individuals who are extremely numerous and scattered across various countries. Their affiliation supports their activities, even financially, but does not allow a real interaction with the board. The members are therefore not involved in decisions and they are not part of the construction of the discursive strategy. Their supporters can be involved in advocacy actions, such as a collection of signatures, mail bombing actions or public events. However, the organisation's approach remains top down, and supporters simply endorse indirectly the decisions made by management. In response to decisions made by this kind of NGO, members or supporters can, at the most, decide to make more donations or withdraw their membership.

NGOs that work mainly alone also struggle to satisfy the second criterion which verifies their legitimacy. The inclusion of ultimate beneficiaries is not a priority for these organisations. Although the particular interests of some beneficiaries are at the heart of their lobbying, these NGOs act without being directly connected to them. Certainly, these organisations know who their beneficiaries are as they are able to carry out research, surveys or meetings. They also use questionnaires or surveys to test the feelings of their supporters. However, there is no evidence of any connection with supporters and beneficiaries. In addition, they are not included in the decision-making process.

The transparency of the organisation in the decision-making process is another criterion that is not achieved. Even if some scholars have investigated how these organisations decide to devote themselves to a certain phenomenon⁸³¹, the process that leads the board to face the legislator is unclear. There are few public reports of their meetings or conferences they participate in or the third party actors they rely on. Even during cases of collaboration with other NGOs, it is not clear who they are or what rules exist in this relationship. A positive element is the annual reports of the activities carried out. Financial transparency is relatively satisfied. While these individually acting NGOs publish the list of their main sources of funding annually and explain how they manage their

⁸³¹ HENDRIX C. S., WONG W. H. *Knowing your audience: How the structure of international relations and organizational choices affect amnesty international's advocacy*, The Review of International Organizations, 2014, pp.29-58.

budget their balance sheets could be clarified in more ways.

The criterion of independence is instead satisfied by these large NGOs that act individually. They are financially free, as they have an extensive network of public and private funding. They are also often supported by many private members who guarantee their donations. They are, therefore not dependent on individual donors. Independence from governments is also satisfied. This type of independence is one of the strengths of their action. It is demonstrable in cases where governments try to hide the work of these NGOs, since it is considered inconvenient or not corresponding to their interests⁸³².

Given the previous four criteria, that of responsiveness cannot be satisfied. As we have said, the quality of decision-making procedures is undemocratic and lacks of transparency. In this way it is not possible to understand if the single actions of these NGOs meet the expectations of their supporters. The vision and the mission are set by the organisation itself. If these kinds of NGOs collaborate with other actors, especially smaller NGOs, they will not have much influence on their working method or their decisions. These are simply temporary relationships or dictated by the contingency of certain practices.

In table below we have related the legitimacy criteria with the concrete actions and practices that characterise the work of the INGOs considered. As in the case of the network, we assessed with '1' the practices that we managed to verify and that guarantee the legitimacy of the NGO to function as a transmission belt between IOs and citizenship.

⁸³² SIKKINK K. *Evidence for hope: Making human rights work in the 21st century*, Princeton University Press, 2019, p.159.

Table 10. Single NGO capacity to function as transmission belt.

Ex. Amnesty International, Global Witness	Participation	Inclusion	Organisational transparency	Financial transparency	Independence
Members inclusion	-				
Beneficiaries inclusion		-			
Surveys/studies		1			
Position papers			1		
Report of meetings			-		
Positions taken			1		
Annual report			1		
Source of financing				1	
Annual Budget				1	
Independence from economic actor					1
Independence from government					1
Total responsiveness	8				

As we have highlighted, there is no direct relationship with members and beneficiaries, consequently there is no inclusion. Instead these NGOs produce specific studies, publish them and are promptly available. In our experience, we have found Global Witness reports also in the eastern DRC, at the office of several NGOs that have been consulted. Their position papers are available, but not the reports of meetings or conferences. There is enough transparency in their annual reports, in the sources of financing and in the annual budget, which are publicly available. Their independence from economic and political actors is more than guaranteed. The sum of the score is 8/11, which means that responsiveness was not achieved.

Based on the highlighted criteria, we understood that the democratic legitimacy of a network is generally superior (10/11) to that of an NGO that works mainly alone (7/11). In the table below we can summarise the five criteria, grouping the various actions that were detailed in the previous tables. See clearly how the network is legitimated overall and therefore more able to influence a certain legislative initiative.

Table 11. Results of the legitimacy criteria applied to network and single NGO.		
Legitimacy criteria	Network	Single NGO
Participation	yes	no
Inclusion	yes	no
Organisational transparency	yes	no
Financial transparency	yes	yes
Independence	yes	yes
Responsiveness	yes	no

This experiment was used to understand if NGOs met the transmission belt concept, in other words, if they are able to act as a legitimate communication channel between IOs and citizens. Although not all criteria are met, we can still say that NGOs are indeed a supplement to conventional legitimacy channels, for example elections. They convey part of the values expressed by a part of citizenship. We can say that their work with the legislator is sufficiently legitimated. Having a real legitimacy, they also have an impact, which is, as already said, difficult to measure.

Conclusion

This chapter has been built in part from the interviews carried out during our field research. The primary objective of the chapter was to highlight the tools that enable the construction of various discursive strategies for NGOs to influence a norm. We understood as well how NGOs have played an important role in many aspects. First of all, we noted how important the work of the NGOs was to make the problem of conflict minerals known. This happened already during the conflict in eastern DRC, when local NGOs understood the role played by natural resources in continuing the conflict. In fact, we have highlighted how some of these NGOs have worked for over thirty years on highlighting the link between the exploitation of minerals and other resources in the region and consequently the persist of the conflict. Especially Congolese NGOs have exported detailed information, thanks also to its proximity to the beneficiaries, the populations living in the mining areas. Proximity to beneficiaries, or inclusion, is among other things an important criterion of legitimacy of NGOs. The work of NGOs engaged in the issue of conflict minerals has allowed them to build well-documented positions to carry out effective advocacy and lobbying work. Among the tools for building a discursive strategy we highlighted: the exchange of information between NGOs to build truthful and documented information; the use of reports and position statements that have been presented to the authorities and civil society; the establishment of several human rights observatories. We understood how the commitment of NGOs in the east of the DRC has allowed

INGOs to spread their discourse both towards the legislator and towards global public opinion. Among the various tools to make the problem known to the public and indirectly to put pressure on the legislator, the main ones are: the publication of brochures and reports; the use of social networks; articles in the press, television and petitions. Among the various tools to put pressure directly on politicians, NGOs have used: writing letters; direct and personal contact, meetings, invitations to conferences, invitations to missions on the ground and, finally, putting them in contact with relevant personalities or testimonials of the events. Above all, these last two tools are very useful to show policymakers the demands of civil society and increase their awareness of the problem. Moreover, we understood that to organise all these tools that make up the discursive strategies of NGOs, their ability to coordinate together is absolutely essential. In fact is necessary to take a shared, legitimate and technically valid position. This is the reason why many meetings of NGOs to study the best strategies to influence the legislator are organised, in order to study the technical aspects of the laws. We have realised that for NGOs there are many other different ways to organise these kinds of discursive strategies, for example working alone, in partnership or in a network.

In this chapter we have also summarised the most important initiatives that aimed to regulate the trade of some minerals. These initiatives have begun to address the escalating conflict situation in Central Africa which started in the nineties. In fact, the first initiatives, such as the ICGLR, were undertaken at the regional level. IOs also wanted to adopt some regulations to break the link between natural resources and conflicts. Among the first IOs, the OECD has published the Due Diligence Guidance for Responsible Business. This guide became the basis upon which some laws or initiatives were written, such as the EITI, the Dodd-Frank Act in the USA, the EU Conflict Minerals Regulation or the Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains. These initiatives have been written for the will of several actors: the UN that had crystallised, with some reports, the link between the perpetuation of the conflict and the exploitation of resources in the DRC; MNCs who did not wanted to risk new scandals and to be held responsible for conflicts; institutions, such as the EU, whose aim was to protect businesses and consumers, as well as not to lose on investments made to improve governance in ACP countries; NGOs that because of their objectives have wanted to defend human rights, propose solutions and understand the cause of conflicts and promote a fair and responsible use of natural resources.

The NGOs we analysed have been interested in these issues since at least the nineties. They began to study events, to make them known through society and to propose solutions. These solutions took

the form of several discursive strategies that aimed to influence policy makers. In fact, we have mentioned some specific advocacy campaigns, such as 'Publish What You Pay' or 'Tell EU leaders to stop conflict minerals', which have aimed to mobilise the public opinion of various countries to put pressure on the political decision makers to take convincing and effective political initiatives. These initiatives have certainly had effects and thanks to these campaigns certain NGOs have acquired visibility and legitimacy. On other occasions, however, the mobilisation of NGOs has had decidedly negative effects. In fact, the action of NGOs was counterproductive following the approval of the Dodd-Frank Act: in this case the MNCs, for fear that the NGOs would ruin their image, stopped supplying themselves with minerals from the DRC, causing the collapse of the market. The Kabila law, enacted during the same period in the DRC, aggravated the situation; millions of miners and other related workers, lost their jobs and no longer knew how to feed their families⁸³³. In addition, the MNCs have experienced difficulty in finding raw materials for their manufacturing.

In this chapter we have also analysed specifically the actions of NGOs on the decision-making process for approving the EU regulation. The EU institutions wrote this regulation, as usual, with a multi-stakeholder approach. The various EU branches; EC, EP and EU Council, have consulted various actors in order to find a compromise between the various parties. The EC, especially DG Trade, was responsible for writing the regulation. It consulted with internal and external actors to write a draft regulation that was shared as widely as possible by the various actors. At this juncture we have discovered that there were a great number of players involved: IOs, MNCs, academics, think-tanks, independent consultants, smelter countries, national governments were consulted, in addition to NGOs. We therefore understood that the influence of NGOs is significant, but on a comparable level with many other actors who do not necessarily share the same positions.

To be more effective, NGOs have employed various discursive strategies, working alone, in partnership, in networks or in coalitions. The way of working associated with other actors can be stable or created ad hoc to influence a specific regulation. We compared the various partnerships and networks and found that there is no more or less effective or legitimate way to influence the legislator. Each of these strategies has positive and negative points and suit different NGOs in different ways, depending on their make-up and character. NGOs are actors among others, their legitimacy is certain but the quality and quantity of their influence is difficult to measure.

⁸³³ SYDOW J., REICHWEIN A. *Governance of Mineral Supply Chains of Electronic Devices. Discussion of Mandatory and Voluntary Approaches in Regard to Coverage, Transparency and Credibility*, Germanwatch, 2018, pp.1-52.

Conclusion: How can NGO action create legitimacy that can in turn influence a new legal paradigm?

"From tea to black gold, from nutmeg to tulip, from saltpeter to coal, raw materials have always accompanied the great explorations, empires and wars, and have often changed the course of history"⁸³⁴.

⁸³⁴ PITRON G. 2019, p.38.

1. What we expected and what we found

NGOs play an important role in contemporary society and within IR. Some of these organisations have specialised in lobbying and advocacy and operate with large IOs and governments. There are numerous activities that this type of actor performs daily to build a discursive strategy that legitimises them to a position where they can influence standards and a new legal paradigm. Among these practices, the most common are: the ability to inform, mobilise or influence public opinion through campaigns, protests or mobilisations of various types; the possibility of circulating press releases to create pressure or influence institutions; the ability to present requests, proposals or position statements to the legislator through policy papers, both when they invite them to consultations or on their own initiative; recourse to direct contact with policy-makers or their representatives or officials in charge of dealing with a certain practice⁸³⁵.

In this thesis we have amply demonstrated how NGOs advocacy strategies, and in particular lobbying, are based on a discourse. It is built with many steps and is oriented, in particular, by a work mainly carried out collectively with other actors of civil society, which we have interviewed and analysed. The first phase of the construction of the discourse is used to search for information and to produce documents useful for deepening a certain problem. The topic or issue to work on is chosen by NGOs according to various criteria, which are not always transparent, for example: the specific interest for a certain geographical area; the particular interest in a given topic; the ethics or personal history of the organisation; pressure from third parties; etc. After choosing a topic and before they can take a position, NGOs need to get informed. They therefore carry out research and documentation, independent from media or government institutions. The information is then processed, discussed and written down. The work of different actors and the collaboration between NGOs allows a position to be established and, in turn, lobbied in the direction of the legislator. The position taken is subject to changes and refinement over the passage of time or the development of events.

One of the strengths of this thesis is that of having reconstructed the various strategies through which NGOs construct their discourse. The various operational methods and the different channels through which NGOs collaborate with each other, has been highlighted through field interviews. We understand that there is no standardised mode of action for building a discourse. Each NGO forms its own position that is established in various ways with other actors similar to them.

⁸³⁵ KOTZIAN P., STEFFEK J. 2011, p.27.

The construction of the discourse serves NGOs by both mobilising public opinion (and raising awareness of a certain problem) and by applying direct pressure on the legislator. In fact, NGOs are also mobilising to claim their positions in institutions or other IOs. There are various methods of exerting this pressure and we have highlighted some of those directed at the EU institutions. Some strategies are based on individual work while other strategies are based on collective work. In this case, NGOs act through a network or partnership. Collaboration between NGOs through partnerships can also include actors such as governments, research centres or associations representing industry. This modality is categorically rejected by some NGOs, for fear of losing their independence or credibility. Some NGOs prefer to act alone for most of their actions. This, however, does not exempt them from having to consult different organisations in order to construct a legitimate, verified and effective discourse. In fact, on certain occasions, NGOs must work together with other organisations, for specific actions or for a limited time.

2. The effectiveness of NGOs lobbying

In this thesis we have tried to resolve further doubts posed by some previous studies, which cast doubt on the legitimacy of NGOs⁸³⁶. Although the NGOs analysed in this thesis have partially passed the test of their legitimacy, we must emphasise that their lobbying may seem to us rather weak, but still effective. We have stressed that the actors involved in the construction of a law are numerous. In fact, the EU exercises its governance based on a "multi-level" system: decision-making power is divided between different interdependent, public and private, national and international actors⁸³⁷. These actors are not in balance with each other, exerting unequal forces and influences. Among them, some of them represent very powerful interests, such as those of the MNCs. The associations representing the industry continually emphasise how their companies are responsible for creating jobs, generating growth, increasing the prosperity of citizens; in addition, their affiliates, including the largest MNCs in the world, declare that the taxes they pay are only a small part of the contribution they make to society⁸³⁸. In addition to economic interests, the legislator must also consider political interests and relations with numerous countries. We have seen in this sense how the EC has long connected with third countries through the EEAS. The sum of these interests weakens the positions of NGOs and can reduce the effectiveness of some of their discursive strategies. However, pressure from NGOs obliges MNCs to adopt new codes of conduct,

⁸³⁶ See for example the conclusions of KOTZIAN P., STEFFEK J. 2011.

⁸³⁷ GROSSMAN E., SAURUGGER S. *Les groupes d'intérêt au secours de la démocratie?*, Revue française de science politique, 2006, pp.299-321.

⁸³⁸ BUSINESS EUROPE *Tax transparency: Tax rulings are essential for companies to invest in Europe*, Position paper, 15/10/2015, pp.1-4.

since their action is part of the business-government relations, influencing them⁸³⁹.

Thanks to our study, we can confirm that some NGO strategies in the construction of discourse remain absolutely valid and important. In fact, NGOs have important resources when confronting the legislator. In particular we want to highlight some resources that characterise NGOs in the construction of their discursive strategies, which are partly suggested by the studies of Kotzian and Steffek⁸⁴⁰ and completed by our study.

I) Information providers: NGOs remain an important source for information. As we have seen, through their research and their contacts, they are able to produce important documents and statements to inform public opinion and the legislator. The neutrality or scientific nature of their studies is not proven, but their experience is crucial on certain issues. In particular periods and for some geographical areas, NGOs may be the only available source of information.

II) Information through media: even the media can draw on information from NGOs who in return sometimes ask to be cited as a source⁸⁴¹. In the case of the EU Conflict Minerals Regulation, despite some scholars "indicating that the role of CSOs in publicising EU politics and also the resonance of CSOs in national media is low"⁸⁴², we underline how NGOs know how to convey certain messages to society. For example, their message can more easily pass through the media if they do "incite public awareness and protest by pushing a certain theme"⁸⁴³. The content of the discourse, which contributes to the legitimisation of NGOs, has been a key success factor on certain occasions⁸⁴⁴. In fact, as we have shown in this thesis, it is thanks to certain specific actions of NGOs that, in universities, social networks or in the media, the problem of conflict minerals has become known worldwide. Certainly their action with the EU legislator is still little known by the public opinion today and sometimes citizens do not trust so much EU institutions⁸⁴⁵. This does not seem new to us, given that EU policies are generally less known by European citizens than national policies. This is, however, primarily a concern for the EU and not for NGOs, the media or citizens.

⁸³⁹ DOH J. P., GUAY T. R. *Globalization and corporate social responsibility: How non-governmental organizations influence labor and environmental codes of conduct*, In: Management and international review, Gabler Verlag, Wiesbaden, 2004, pp.7-29.

⁸⁴⁰ KOTZIAN P., STEFFEK J. 2011.

⁸⁴¹ *Ivi*, p.24.

⁸⁴² *Ivi*, p.23.

⁸⁴³ *Ibidem*.

⁸⁴⁴ GODDARD S. E., KREBS R. R. 2015, pp.26-27.

⁸⁴⁵ In fact, less than fifty percent of citizens of all EU countries trust in the Union. Source: EC, *Autumn Standard Eurobarometer 2019*; www.ec.europa.eu.

III) Moral topics: NGOs have the ability to "recur to their moral authority and the moral quality of their arguments as an influential resource in pushing for certain policies"⁸⁴⁶. In our case study, we highlighted how NGOs started working on the topic of conflict minerals because of their contribution to the outbreak of conflict in the east of the DRC and have continued to fuel the instability of the entire Great Lakes region. Generally speaking, NGOs use the topic of conflict and the extreme and unequal exploitation of natural resources to influence political leadership towards remedial and relevant action.

IV) Representation: NGOs are representatives for collective interests. We have seen in this thesis, especially in the case of NGO networks, how NGOs have tried to influence the legislator through actors who live and work in the areas affected by a problem. In this way they managed to bring the interests of salient elements of the population into the decision-making process. Even the legislator, in particular some MEPs, were able to evaluate certain problems directly on the ground, through the intermediation of NGOs. This fact is in direct contrast to many criticisms that have been made on the legitimacy of NGOs, in particular that of not representing anyone's interests or of working exclusively for themselves⁸⁴⁷.

V) Service provision: NGOs can facilitate the work of IOs, through formal or informal relationships. In our case, we have verified how some NGOs helped to make the legislator understand the legal mechanisms related to the law, especially in the case of some MEPs. It is evident that their role remains marginal in the decision-making process. In fact, it was the EC, with the task of writing the legislation that dealt with numerous actors, including consultancy and research contract companies. This leads us to the conclusion that the role of NGOs in service provision is not decisive. Taking advantage of their knowledge, NGOs could, perhaps, work more often as consultancies: being non-profit, their independence and impartiality could also be more appealing than most of the private consultancy and research contracts, situated in the for-profit world.

VI) Direct contacts: NGOs have knowledge suitable to influence the decision-making process. Through their network, NGOs can use people of influential personality to bring the legislator closer to their positions. We have seen how some NGOs used this resource when, for example, they managed to mobilise the bishops of the DRC or when they invited Denis Mukwege to the EP to talk

⁸⁴⁶ KOTZIAN P., STEFFEK J. 2011, p.26.

⁸⁴⁷ *Ivi*, pp.39-41

about their experience. Some NGOs are even specialised in knowing how to use influential celebrities from cinema or entertainment to give visibility to their discourse⁸⁴⁸.

VII) Visibility: this is a specific resource of INGOs. Their ability to act, even simultaneously, in numerous countries, makes them a particularly powerful actor. This does not mean that their ability to influence the legislator is particularly superior to others. Furthermore, it must be said that in some cases their name is particularly respected or immediately associated with some specific issues⁸⁴⁹. However, this visibility is a prerogative that allows large INGOs to make their position known to huge parts of public opinion and governments.

We want to add that the NGOs taken into consideration have also worked well with respect to a key factor in the legitimisation process, namely the audience⁸⁵⁰. As we have seen, they have been able to interface with different actors to legitimise their discourse. NGOs deal and adapt their discourse strategies to the most diverse actors such as: other NGOs; MEPs, EC and European Council officials, associations representing the industries, their supporters, the beneficiaries, the students and academics, activists, local politicians and the citizens. In this way they move easily between different contexts, another factor considered very important to win the battle of legitimacy⁸⁵¹. Another key factor that allowed the analysed NGOs to win the battle of legitimacy was that of "the age"⁸⁵², the history and experience of an organisation. In our case study we have contested, verified and articulated the idea that the history and experience of an organisation certainly plays a large role in its capacity for action, influence and effectiveness.

Finally, we want to underline the last key factor that has emerged within the NGOs efforts to gain legitimacy during the negotiations of the EU Conflict Minerals Regulation. This key factor is the construction of a new common identity. The analysed NGOs that were analysed have joined forces to represent common human interests; the campaign to respect human rights and a more responsible approach to the management of resources and the environment⁸⁵³. Their legitimacy in the fight against corruption and environmental devastation; the war for the control of resources, has allowed

⁸⁴⁸ A prime example is the case of Enough Project.

Cf. ENOUGH TEAM, *Celebrity with a Purpose: Actors Champion Enough's Work*, 14/5/2015; www.enoughproject.org.

⁸⁴⁹ For example Amnesty International and human rights.

⁸⁵⁰ GODDARD S. E., KREBS R. R. 2015, pp.26-28.

⁸⁵¹ *Ibidem*.

⁸⁵² MONIN P., CROIDIEU G. 2012, p.254.

⁸⁵³ MAX IMPACT *Rapport d'évaluation de l'implémentation du système de traçabilité dans la province du Sud-Kivu: Gestion de flux de minerais (de la production au point d'achat) dans les sites validés en territoires de Walungu, Kabare, Mwenga, Kalehe et Uvira*, Janvier 2016, pp.1-33.

these NGOs to create a new common identity. The whole issue of conflict minerals has helped to define NGOs just as much as NGOs have shaped the regulation to try and protect humanity and the environment from corporate and international greed⁸⁵⁴.

Furthermore, through the leveraging of these factors, NGOs continue to play an active role in IR⁸⁵⁵. Competition with other actors is inevitable and of course each actor has a different weight. However, the abilities, strengths and weaknesses of different actors will always be disproportionate, especially in trying to influence the legislator. Even when taking this into account, NGOs still have their reasons to continue their battles and have demonstrated that they are capable of evolving to work together to share their strengths. Finally, in the next paragraph, we will suggest some considerations on future topics of international debate that will also likely affect NGOs.

3. Directions for further research

Thanks to the multidisciplinary approach of this thesis, we have had the pleasure of exploring some topics related to geology. This exercise was necessary in order to better understand the research that NGOs carried out in the early stages of the EU Conflict Minerals Regulation negotiations. This work has allowed us to understand on which ethical bases NGOs build and try to legitimise their discourse, which is made up of numerous aspects. Minerals are in fact the pivot around which many issues revolve: economic, environmental, social. We have illustrated why the extended and numerous conflicts in the eastern DRC have also been fuelled by an economy based on the trade in natural resources and unequal power relations⁸⁵⁶.

Despite fragile stability, security issues persist and are amplified by deep political crises, "and may eventually lead to an unprecedented crisis and a point of no-return that could end in new rounds of violence"⁸⁵⁷. This is also why several NGO protagonists of this study work on issues related to natural resources. Furthermore, minerals have historically played a key role in the Great Lakes region⁸⁵⁸. The populations inhabiting those lands often depend on these resources but suffer the

⁸⁵⁴ MARRIAGE Z. *Congo Co: aid and security*, Conflict, Security & Development, 2010, pp.353-377.

⁸⁵⁵ PRICE R. *Reversing the gun sights: transnational civil society targets land mines*, International organization, 1998, pp.613-644.

⁸⁵⁶ LE BILLON P. *Resources, wars and violence*, In: The International Handbook of Political Ecology, Edward Elgar Publishing, 2015.

⁸⁵⁷ NYENYEZI BISOKA A., VLASSENROOT K. *From an electoral to a political crisis in the Democratic Republic of Congo*, Conflict Research Programme Blog, 2019.

⁸⁵⁸ VIGNATI E. *Le sel et le fer au cœur des échanges, de la circulation et du commerce dans la région des Grands Lacs à l'époque précoloniale*, Les Cahiers d'Afrique de l'Est/The East African Review, 2019, pp.241-284.

consequences of their exploitation, especially when in contact with armed groups⁸⁵⁹. This is also a reason why NGOs often deal with resource related issues.

The metals considered in this study are strategic. They attract the attention of numerous actors, including sovereign states, IOs and, in our case, the EU. They are indispensable for the economy of every nation and this is one of the main reasons why the EU has decided to legislate. By highlighting the morphological characteristics of the metals included in the regulation, we can begin to understand how their formation takes millions of years. On the other hand, their exploitation is proceeding at a reckless speed and market demand remains high. This consumption causes irreparable environmental damage and has a considerable impact on the populations living in certain areas. Several NGOs have specialised in these issues. In particular, we interviewed some NGOs that mainly deal with lobbying and advocacy, at local institutions and IOs. Many of these NGOs are committed to promoting fair exploitation of resources, which could be beneficial for many, rather than enrichment for a few and continuing to represent a joint cause of conflicts and growing inequalities. Through lobbying on various initiatives which aim to regulate the trade of resources, these NGOs have suggested to the legislator various methods to put an end to disasters connected to the mining sector. Various legislators have mediated the interests of various actors, including NGOs and associations representing the industries, who want at all costs to continue to exploit metals that are useful or essential in many productions.

Starting from studies on the geological characteristics of these strategic minerals, NGOs have been able to inform and mobilise public opinion. NGOs have shown how these resources are indispensable for the functioning of a myriad of objects. We have also explored how these metals are the basis of numerous industries such as: energy; transport, chemical, pharmaceutical, aerospace, military, etc.

According to some, the energy and digital transition which began in the eighties represents the third industrial revolution⁸⁶⁰. Metals are the basis of the transition process towards a green capitalism. This transition should theoretically allow humanity to mitigate the effects of climate change that MSs of the UN Framework Convention on Climate Change have committed to fighting since the 2015 Paris Agreement. However, this growth model requires a much more intensive exploitation of resources contained in the earth's crust. Indeed, some studies claim that more minerals will be

⁸⁵⁹ LE BILLON P. *Bankrupting peace spoilers: Can peacekeepers curtail belligerents' access to resource revenues?*, In: High-value natural resources and post-conflict peacebuilding, Routledge, 2012, pp.41-64.

⁸⁶⁰ RIFKIN J. *La terza rivoluzione industriale*, Edizioni Mondadori, 2011.

extracted in the next thirty years than have been extracted in the last seventy thousand⁸⁶¹. This new race for metals is stimulated by the growth of the world population and partially by the growth of their well-being. The development of a high-tech consumption model is fuelled by new energy sources that are sold as 'green', or as 'zero environmental impact'. At the basis of this transition are ultra-powerful magnets made up of rare metals, which have exceptional properties⁸⁶². For this reason they are increasingly used, directly or indirectly, in the daily consumables of billions of people, for example: smartphones; computers, electric vehicles, photovoltaic panels, wind turbines, telematic infrastructures, medical equipment, military technologies, industrial materials and the list continues to grow. Of course, it's not just about gold, tungsten, coltan and tin. The diversification of technical inventions has pushed the human being to be able to exploit almost all the eighty-six elements present in Mendeleev's table. The acceleration in their use is extraordinary, if we consider that up to the seventies only about twenty elements were exploited⁸⁶³.

The extraction of these metals causes a strong pollution of the soils, caused by the substances used to purify them. The mines consume, inter alia, large quantities of water, land and energy⁸⁶⁴. Deforestation and land use in general, including the seabeds, are also closely related phenomena⁸⁶⁵. Paradoxically, to produce clean energy, large quantities of CO₂ are released into the atmosphere. For example, consider that to produce a solar panel, which contains silicon, more than seventy kilos of CO₂ are generated⁸⁶⁶. Even the production of an electric vehicle requires enormously more energy and metals than the manufacturing of a traditional vehicle⁸⁶⁷. When we consider this in terms of large numbers the challenge is impressive: a company like "Volkswagen, for example, aims to sell three million electric cars by 2025. Volvo has announced that from 2019 it will stop producing machines powered only by petrol or diesel. The governments of UK and France have made a commitment to ban the sale of vehicles with combustion engines since 2040"⁸⁶⁸. Furthermore, it is false to think that an electric car set in motion does not pollute, since to recharge the batteries there will still be a need for a power plant to produce energy. The problems related to recycling and

⁸⁶¹ PITRON G. 2019, p.36.

⁸⁶² *Ibidem*.

⁸⁶³ *Ivi*, pp.50-51.

⁸⁶⁴ GLAISTER B. J., MUDD G. M. *The environmental costs of platinum-PGM mining and sustainability: Is the glass half-full or half-empty?*, Minerals Engineering, 2010, pp.438-450;

MUDD G. M. *Global trends in gold mining: Towards quantifying environmental and resource sustainability*, Resources Policy, 2007, pp.42-56.

⁸⁶⁵ SONTER L. J. et al. *Mining drives extensive deforestation in the Brazilian Amazon*, Nature Communications, 2017, pp.1-7.

⁸⁶⁶ PITRON G. 2019, p.76.

⁸⁶⁷ *Ivi*, p.77.

⁸⁶⁸ MASTO R. *La variabile africana. Riserve naturali ed equilibrio geopolitico del pianeta*, Egea, 2019, p.68.

disposal still remain unsolved⁸⁶⁹. There are many documented cases of illicit trade in environmental waste that are exported to Africa or Asia to remedy the high disposal costs⁸⁷⁰. Consequently, this illegal trade feeds the coffers of criminal organisations and corruption⁸⁷¹.

It is thus acknowledged that green capitalism does not consider the dark side of the exploitation of these resources, which is often conducted in an unethical and irresponsible way. This in turn fuels climate change. With the emission of greenhouse gases, the intensive exploitation of these resources will be the basis of serious ecological or migratory or health crises⁸⁷². Furthermore, it should not be forgotten that the intensive extraction of metals can also be a cause of the exploitation of workers and provoke serious violations of human rights⁸⁷³.

We highlighted the shortcomings of the green economy because we believe that NGOs must continue to deal with natural resources⁸⁷⁴. The next area of interest for EU institutions and NGOs that exert political pressure on them is the likely regulation on cobalt. This was confirmed by one of our interviews: in fact some NGOs are already preparing for this next initiative⁸⁷⁵. The quantities of cobalt necessary for the energy transition, in particular for the production of batteries, are enormous. Currently the largest global cobalt reserves, identified by the companies, are located in the DRC⁸⁷⁶: the same region of the world "that supplied rubber to Leopold II of Belgium. Although considerable reserves are also found in China, Zambia, Russia and Australia, seventy percent of the cobalt used in the world today comes from the central African country, and the reason is simple: Congolese cobalt is the most convenient because production costs are very low. In Congo there are no organised mines as such, the metal is extracted from dozens of occasional sites, generally located in the Katanga region, where it is estimated that at least 100,000 people dig with bare hands or with

⁸⁶⁹ ZENG X., LI, J., SINGH N. *Recycling of spent lithium-ion battery: a critical review*, Critical Reviews in Environmental Science and Technology, 2014, pp.1129-1165.

⁸⁷⁰ EUROPEAN ENVIRONMENT AGENCY *Movements of waste across the EU's internal and external borders*, Office for Official Publ. of the European Union, 2012.

⁸⁷¹ MASSARI M., MONZINI P. *Dirty businesses in Italy: a case-study of illegal trafficking in hazardous waste*, Global crime, 2004, pp.285-304;

BISSCHOP L. *Is it all going to waste? Illegal transports of e-waste in a European trade hub*, In: Transnational Environmental Crime, Routledge, 2017. pp.245-273.

⁸⁷² MCMICHAEL C., BARNETT J., MCMICHAEL A. J. *An ill wind? Climate change, migration, and health*, Environmental health perspectives, 2012, pp.646-654.

⁸⁷³ SCUDERI R. *Congo, 14 famiglie contro Apple e Google: "Hanno ucciso i nostri figli"*, La Repubblica, 17/12/2019.

⁸⁷⁴ And in part they are already doing it. See for example the work of Greenpeace on cloud and data centre.

Cf. TISON C., LICHTENSTEIN L. *Internet: la pollution cachée*, documentaire, Camicas Productions, 2012. CJP is also already taking an interest in the digital transition.

Cf. COMMISSION JUSTICE ET PAIX *Les fausses promesses du numérique*, Étude 2019.

⁸⁷⁵ Interview with CIOFFO G. 27/2/2019.

⁸⁷⁶ NKULU C. B. L. et al. *Sustainability of artisanal mining of cobalt in DR Congo*, Nature sustainability, 2018, pp.495-504.

rudimentary tools, without any supervision or safety measures. Among these artisanal miners there are thousands of children from the age of seven - at least 40,000 children according to a Human Rights Watch report - who work for two dollars, twelve hours a day. Dead and injured people are frequent, not to mention metal exposure, which causes respiratory problems and diseases from air and ground pollution"⁸⁷⁷. It is therefore clear that the cost of the energy transition is very high in terms of violations of human rights and the environment⁸⁷⁸. This high cost is paid by the most disadvantaged populations⁸⁷⁹ who certainly do not live in the new smart cities that are developing in China, North America and Europe. Instead Africa and its rich subsoil continue to finance geopolitical and economic balances on a global scale⁸⁸⁰. This causes an inexorable exploitation of workers and the environment where companies have the opportunity to save costs by cutting on safety⁸⁸¹.

There are also other findings to explain. A single actor in the world is constantly growing in terms of import, refining, transformation and commercialisation of strategic metals⁸⁸². China "is the most active and best positioned country and has already grabbed thousands of tons of strategic metal"⁸⁸³. Although the reserves of metals are scattered almost everywhere on the planet, their exploitation is concentrated, for various opportunistic reasons, only in some areas. Some economies have specialised in metal mining, while others have abandoned it. The result is that minerals are an extremely strategic resource today, because they allow the speeding up of the digital and energy development on which contemporary economies are based. China has understood this and has acted since Deng Xiaoping to concentrate the entire high-tech production chain within its borders⁸⁸⁴. First of all, western companies transferred the know-how thanks to joint ventures with companies that had outsourced to China⁸⁸⁵. At the same time, a policy was developed to control resources within the country but also in third countries. In Africa this policy has been particularly visible, where nations are following Beijing's grand strategy which includes the passage for the Belt and Road Initiative though the continent⁸⁸⁶. Control of resources will inevitably lead to China's control of

⁸⁷⁷ MASTO R. 2019, p.69.

⁸⁷⁸ ADEOLA F. O. *Environmental injustice and human rights abuse: the states, MNCs, and repression of minority groups in the world system*, Human Ecology Review, 2001, pp.39-59.

⁸⁷⁹ LIPTON M. et al. *Why poor people stay poor: a study of urban bias in world development*, Temple Smith, Australian National University Press, 1977.

⁸⁸⁰ CUSTERS R., MATTHYSEN K. *Africa's natural resources in a global context*, IPIS, Antwerp, 2009.

⁸⁸¹ MASTO R. 2019, pp.69-70.

⁸⁸² GULLEY A. L., MCCULLOUGH E. A., SHEDD K. B. *China's domestic and foreign influence in the global cobalt supply chain*, Resources Policy, 2019, pp.317-323.

⁸⁸³ MASTO R. 2019, pp.68-69.

⁸⁸⁴ PITRON G. 2019, p.213.

⁸⁸⁵ THE STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA, *The National Medium and Long-Term Plan for the Development of Science and Technology (2006-2020)*, 2006.

⁸⁸⁶ DE SWIELANDE T. S., VANDAMME D. *The New Silk Roads: Defining China's Grand Strategy*, In: The Belt and

planetary geopolitical balances. Throughout history, the control of metals has allowed civilisations to develop technical and military progress to excel over others.

The first civilisations emerged thanks to the exploitation of copper, which was then melted with tin and turned into bronze. Then iron was discovered, which combined with carbon, became steel. Also came the eras of gold, oil and uranium. The main inventions of the human being have been connected to all these metals, as well as the empires and the great powers that promoted them. Today rare metals, especially REEs, but also cobalt, tantalum, tungsten, cassiterite, are the most sought after and "Africa is a rich deposit of these resources and, once again, tends to perform the function of reservoir rather than market"⁸⁸⁷. In a different way than in past centuries, history repeats itself: after having supplied slaves, ivory, rubber or cotton, Africa finds itself in the condition of "financing with its agricultural, mining raw materials and with its workforce, the global geopolitical structure for the near future"⁸⁸⁸.

In this context, NGOs cannot limit themselves to humanitarian aid, development cooperation, advocacy and lobbying. The real support for this continent should be to assist movements, associations and in general the struggle for equality through the democratisation of societies. Some of the INGOs considered in this study, in part, are already doing it. While much more needs to be done, some of the possibilities already exist. In African countries there is an educated, informed, attentive and prepared civil society. To develop our research for this thesis we turned to this society and were welcomed with a critical understanding and awareness of the situation. There are millions of associations formed by young people who want to emerge. The poor economic conditions in some countries and the oppression exercised by many governments, suffocates the will for radical change. The political and ruling class is often the antithesis of civil society: it is old, corrupt, self-serving and "continues to control most of the nations, offering their wealth in exchange for advantages for themselves, for their families and for their growing entourage"⁸⁸⁹. However, perhaps in response to an era of uncompromising corruption, new civic movements, sometimes with an international relevance, were born to try to change this situation. Millions of people have already asked for the renewal of institutions, a tangible change. In the DRC we followed the actions of the *Lucha* movement, whose antennas are hoisted all over the country. In other countries this type of

Road Initiative, Palgrave Macmillan, Singapore, 2020, pp.3-22;

BREUER J. *Two Belts, One Road? The role of Africa in China's Belt & Road initiative*, Stiftung Asienhaus, 2017;

CHEN H. *China's 'One Belt, One Road' initiative and its implications for Sino-African investment relations*,

Transnational Corporations Review, 2016, pp.178-182.

⁸⁸⁷ MASTO R. *Africa*, Tam, 2016, pp.27-28.

⁸⁸⁸ *Ivi*, p.38.

⁸⁸⁹ *Ivi*, p.39.

movement has been able to overthrow decades of dictatorships: this was the case of the *Le Balai Citoyen* movement, which caused Blaise Compaoré to resign from the Burkina Faso presidency. These rebel movements are the real possible actors of change in the societies in which they operate. They can promote a true democratisation of the management of natural resources and for this reason they must be supported, especially when they are marginalised by the authoritarianism of their governments.

NGOs can do a lot to contribute to change, given that, as we have seen in this thesis, there are already many links with their counterparts in African countries. This action for change can only be collective, not addressed or managed by a single actor. It must address the change in the production model, which as we have seen, is doomed to failure. The environmental cost of green energy has been exposed. To solve the problem of climate change, the biggest challenge facing human beings today, it is necessary to change the system and rethink a more effective development model. It is necessary to visualise a model that reduces consumption and also manages to increase the quality of life for everyone. The new model must be based on equality: between people, between communities, between countries. This is a job that must necessarily be done by a multiplicity of actors coordinated in collective actions. Civil society can propose a real change, which is coordinated from below, starting from the needs of the people and the environment they inhabit.

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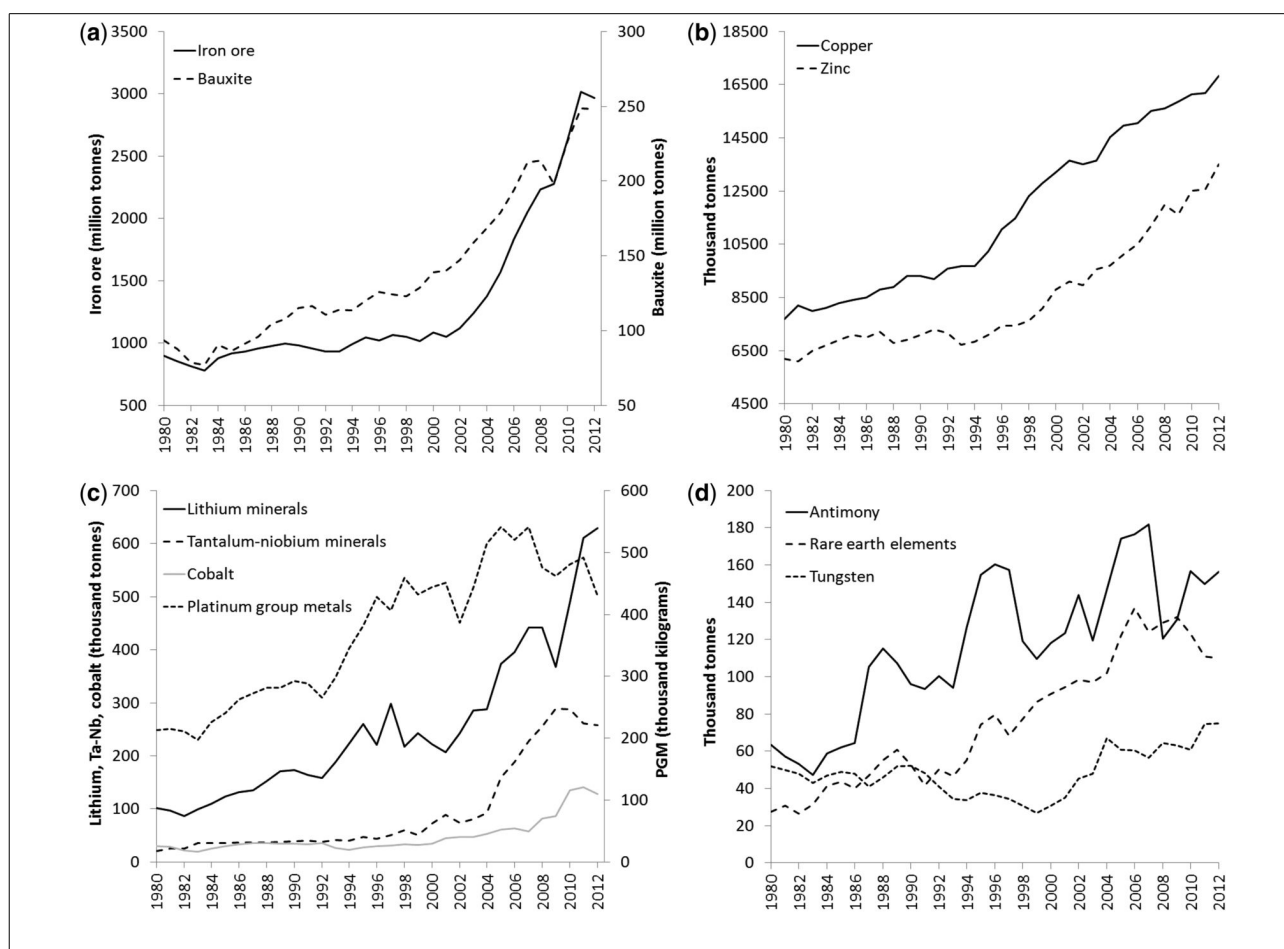
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Annexes













Annual global production of industrial metals and critical minerals and metals 1980–2012. All units in metric tonnes except platinum-group metals (PGM) in kilograms.

Data from British Geological Survey World Mineral Statistics database, 2014 © NERC, except for rare earth elements (REE) courtesy of the US Geological Survey (USGS 2012). (a) Production of iron ore and bauxite. (b) Mine production of copper and zinc (metal content). (c) Mine production of lithium and tantalum–niobium minerals, cobalt and PGM (metal content). (d) Mine production of antimony and tungsten (metal content) and REE (rare earth oxide equivalent).

Source: LUSTY P. A. J., GUNN A. G. *Challenges to global mineral resource security and options for future supply*, Geological Society, London, Special Publications, pp.265-276, 23/6/2014.

Top 10 Mining Companies

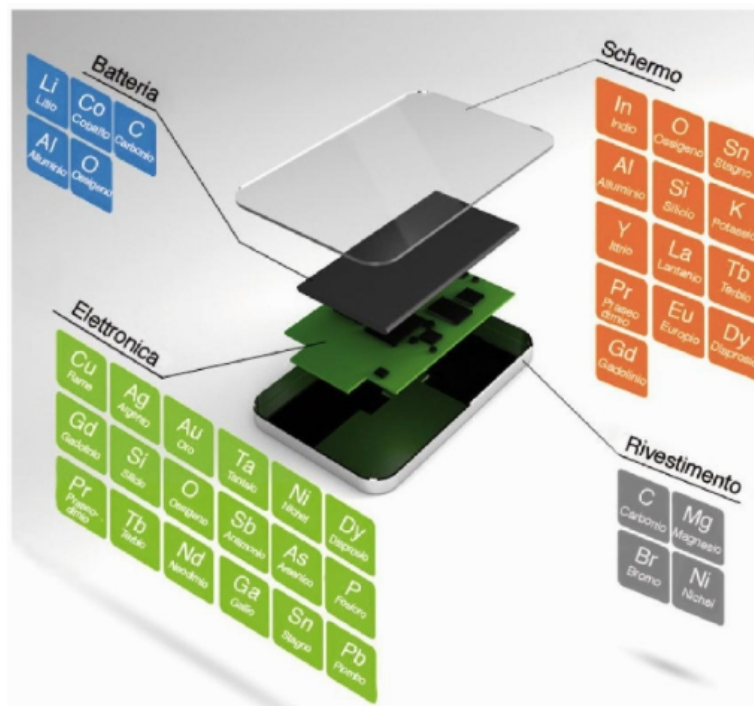
	Market Cap (USD)
 BHP Billiton ↗	135.6 B
 Rio Tinto ↗	106.3 B
 Vale ↗	74.9 B
 Glencore ↗	61.5 B
 Southern Copper ↗	37.0 B
 Anglo American ↗	31.2 B
 Norilsk Nickel ↗	27.4 B
 JX Holdings ↗	25.5 B
 Grupo Mexico ↗	23.8 B
 Coal India ↗	23.7 B

Source: *InvestmentMine*; www.infomine.com; accessed on 25/7/2018.



Cobalt Price 10 years.

Source: *InvestmentMine*; www.infomine.com; accessed on 25/7/2018.

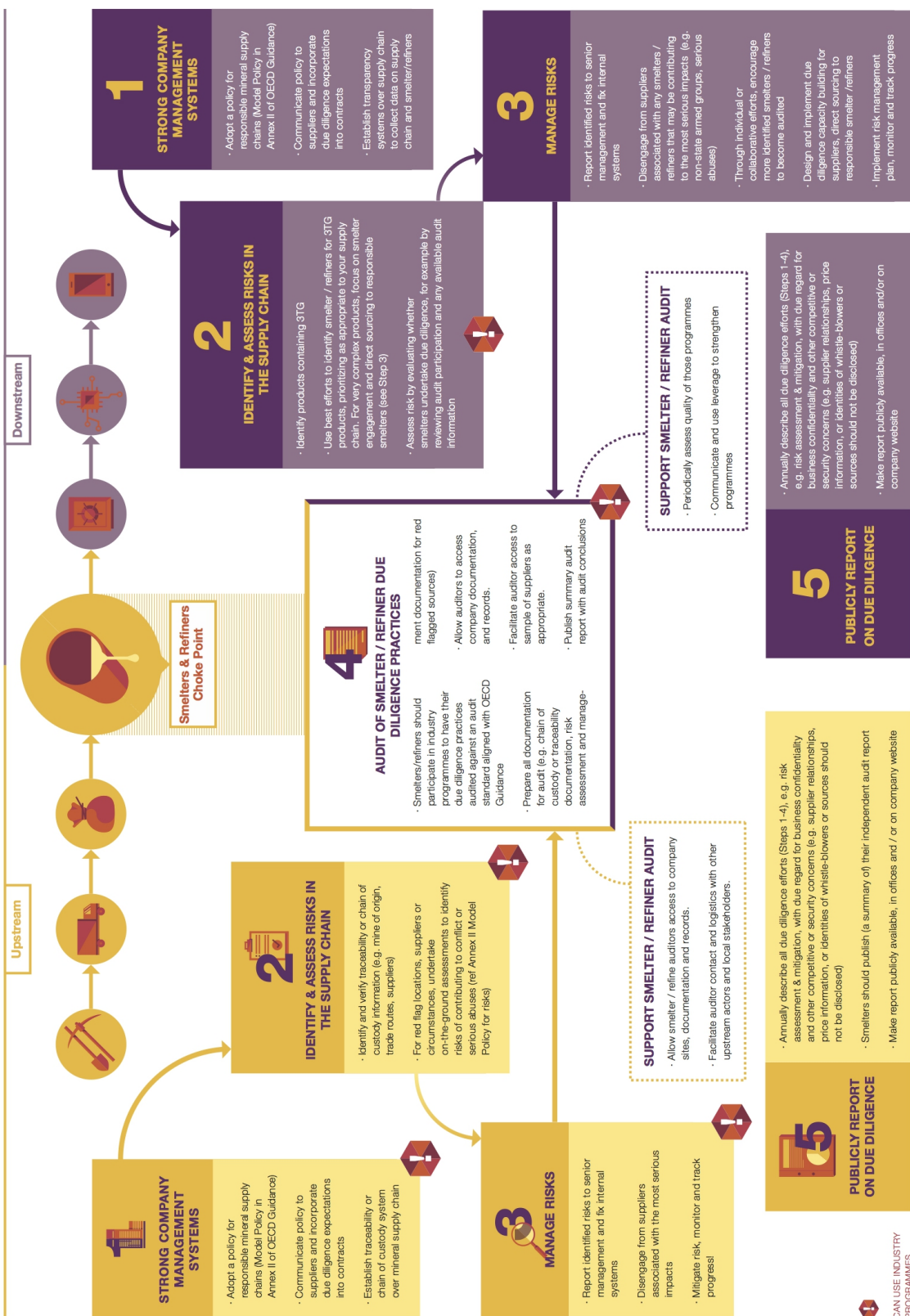


Metals needed to build the iPhone.

Source: PITRON G. 2019.



OECD Due Diligence Guidance for Minerals – 5-Step Framework for Upstream and Downstream Supply Chains



mnguidelines.oecd.org/mining.htm